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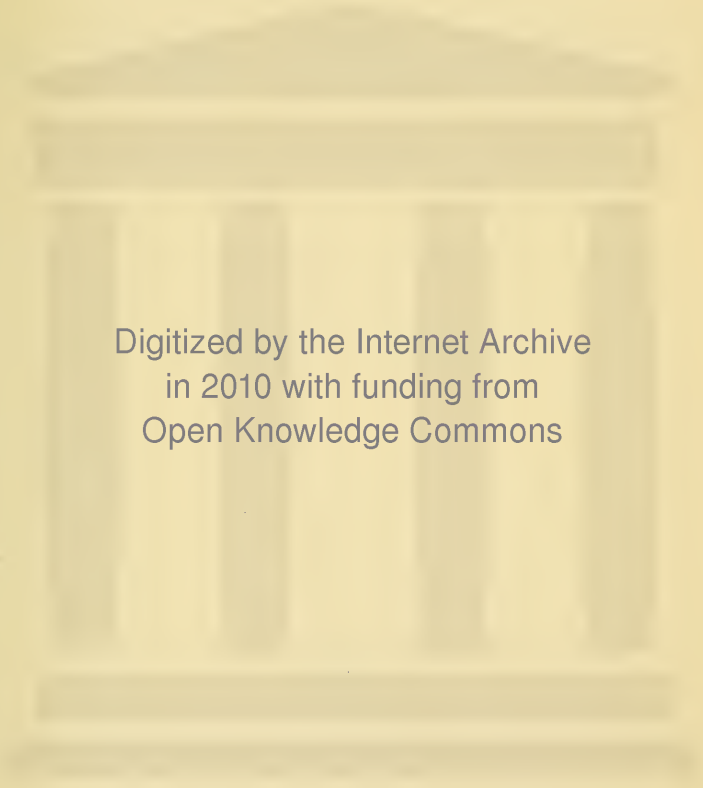
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WHARTON AND STILLÉ'S

MEDICAL JURISPRUDENCE.

FOURTH EDITION.

VOL. I.

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A TREATISE

ON

MENTAL UNSOUNDNESS,

EMBRACING A

GENERAL VIEW OF PSYCHOLOGICAL LAW.

BY

FRANCIS WHARTON, LL.D.,

AUTHOR OF TREATISES ON CRIMINAL LAW, ON EVIDENCE, AND ON THE CONFLICT OF LAWS.

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PREFACE TO THE FOURTH EDITION.

In the present edition the text of former editions has been rearranged and condensed; a large amount of new material introduced, the number of citations having been doubled; and the chapters on the jurisprudence of insanity rewritten. In the task of preparation I have been aided by my nephew, Thomas I. Wharton, Esq., of Philadelphia.

F. W.

Philadelphia, March 24, 1882.

PREFACE TO THE THIRD EDITION.

Since the publication, in 1860, of the second edition of this work, the specialty of psychological law has taken a shape which has made necessary the preparation of a treatise which is substantially new. The circumstances which have led to this change may be thus stated.

Until the close of the last century, insanity received but little attention from physicians, and still less from psychologists. "Lunatics," to follow the barbarous old English designation, were regarded as outcasts mostly incurable; as devoid of those sensibilities which call for tender care; as presenting little more claim to philanthropic consideration than do brutes. Unless birth or wealth gave special opportunities for their custody at home, they were huddled, in England and France, in pens, or chained in cells, where they were generally subjected to treatment the most brutal. In New England they were often let out by the town to the lowest bidder, who undertook to support them for a pittance scarcely sufficient to buy offals for their food, and who permitted them, when they were gentle, to roam at large, or chained them, when violent, in stables. Asylums, as reformatory and hygienic establishments, were unknown. Hence arose the tendency both of psychologists and courts to narrow the definition of insanity so as to reduce as far as possible the numbers of the class who were to be subjected to so wretched a doom.

But on the insanity of George III. a new era came in. Insanity could not be so vulgar a thing when it attacked the king. It could scarcely be regarded by loyal Englishmen as a merited curse, when

it visited a prince of whose virtues they were justly proud, and of whose obstinate self-will they were blindly ignorant. Philanthropists as well as philosophers poured in with abundant advice as to the tenderest treatment to be applied to the royal sufferer; and committees of the house of commons vied with medical commissions in speculating on the characteristics of a malady which had become exalted in the exaltation of the victim on whom it had pounced. Fortunately for the interests of humanity, almost simultaneously took place in Paris the investigations of Pinel. This remarkable man, who united in rare excellence great administrative power, untiring patience of research, and singular attractiveness of style, found the Bicêtre, when he took medical charge of it in 1791, in a condition at which humanity shuddered. It combined, under one general superintendence, the functions of almshouse, prison, nursery, foundling's home, and lunatic asylum, with no distinction made in the treatment of crime and of disease. Such patients as could do so without disturbance mingled with the other inmates of this vast abode of wretchedness and of guilt; but those who were in any way troublesome were chained in damp and putrid cells, under the charge of convicts whose desperateness seemed to constitute their title to this distinction. Against this inhumanity Pinel protested with such untiring and dauntless eloquence that he succeeded in effecting a thorough reformation. A separate asylum, based on wise sanitary regulations, was opened for the insane, and subsequently the Salpêtrière, a distinct establishment for deranged women, was organized under his particular care. He was succeeded at the Salpêtrière by Esquirol, who had been his assistant, and by whom his wise hygienic reforms were further elaborated and extended.

Nor did the efforts of these eminent physicians stop at the amelioration of the physical and mental condition of the insane. Madness having been shown to be capable of cure, and to be a condition in itself implying no moral stigma, and insane asylums

having been proved to be the places where the insane can most readily be restored to health, many persons came to be regarded by their friends and by a rightful public feeling as insane, who previously would have been treated as sane. The definition of insanity, in the philanthropic mind at least, was so enlarged as to include all persons who, while not being clearly maniacs, were yet subject to mental or moral anomalies which a wise medical treatment could remove.

But this was not the only circumstance that tended to an expansion of the definition. Another influence, still more marked, had already prepared the public mind to treat as insanity much that was really only folly or guilty impulse. Between 1760 and 1764, Rousseau published his *Contrat Social* and *Emile*, works which, in the sentimental humanitarianism they inculcated, were the natural extreme reaction from the inhumanity of the prior absolutist regime. Rousseau flamed with a romantic admiration not merely for the liberty to do right, but for the liberty to do wrong. Even the grossest natural instincts were of divine origin, and should be nursed with delicate respect. Crime was something to which a man was impelled by his nature; else why should he indulge in crime? Heretofore all insanity was crime. Now all crime was to be insanity. Sin was not to be viewed as horrible and odious, but as something abnormal, indeed, but provocative of curious regard and sympathy. And criminals were an interesting class of lunatics, who were especially consecrated to the restorative care of the state.

Pinel, like most other French philosophers of his day, was not slow, when responding to this reaction, to welcome a plan which proposed to extirpate crime and inaugurate liberty, by placing crime distinctively under humane medical care. Undoubtedly there was much in his special experience to strengthen him in this view. He had seen many insane persons treated as criminals. It was natural to him to assume the converse, and to hold that there

are many criminals who are to be treated as insane. In sustaining this view he cautiously though distinctly set forth the proposition, hereafter fully discussed,[1] that there is a distinct form of madness in which the reason remains unimpaired. It is true, when he came to illustrate this by examples, it was found that the "reasoning maniacs," whom he described, were more or less maniacs even in their reason. But nevertheless the proposition fitted symmetrically into the philosophy of the French revolution, and was accepted by the apostles of that revolution wherever they taught.

Fifty years afterwards, in times greatly changed, another influence arose to give fresh impetus to the same peculiar theory. The French revolution was over, and with it had vanished those ideas of sentimental humanitarianism which had lent it so much fascination. It is true that the evaporating process was not without a sensible deposit of good. Insanity, for instance, was no longer associated with crime; and the speculations of Pinel, reproduced in a modified shape by his scholar, Esquirol, were, when accepted by French legislation, interpreted to mean nothing more than that crime is often a consequence of insanity, and, when so, is irresponsible. In 1798, however, Gall startled the scientific world by his alleged discovery of phrenology. His genius, eminently enterprising and constructive, but shut out by the then state of Europe from political adventure, betook itself to adventure in science. Arrested, as he tells us, by the fact that those of his school companions who had good verbal memories had bulging eyes, he gradually developed the theory that each function and propensity had a separate local habitation in the brain; and that the power of the function or propensity varied with the size of its cerebral apartment, as measured on the outside. As, however, each function and each propensity dwelt alone in its particular cell, each was capable of independent action, and, of course, as each could be independently strong or weak, each could be privately insane. This sever-

[1] *Infra*, § 531.

ance of functions and propensities was the distinguishing feature of Gall's system; and, to establish it psychologically, he devoted the energies of a mind which, while disdaining logical restraint, and rash in leaping at results, was peculiarly quick, curious, and specious. A peripatetic from necessity, for the German reactionary governments, doubtful of the uses to which his philosophy might be put, forced him into a series of exiles, he collected, wherever he went, from newspapers, from sympathetic disciples, from every quarter, in fact, except the official reports of experts and of courts, every anecdote by which his theory could be helped. Such was the piquant plausibility of his publications that they not only attracted interest, but enlisted enthusiasm. Nothing, indeed, could be more racy than his details. A distinguished prince, remarkable for his sagacity and cool sense, was possessed, it was declared, by an irresistible propensity to steal. A young girl, of singular amiability and excellent reasoning powers, was in the habit of setting fire to houses. A philanthropist, blandly sane in all other respects, met with some injury to the cell that restrained the function of destructiveness, and forthwith betook him to killing his neighbors. No doubt there was a basis of reality in most of Gall's cases. The difficulty was that he did not sufficiently investigate the facts. For all he knew, and for all he inquired, the prince, and the girl, and the philanthropist might have been the descendants of insane parents; might have been epileptics; might have betrayed in their families unmistakable symptoms of mental derangement; might subsequently have died in a madhouse. Nor were his cases cited in such a way as to enable subsequent investigators to inquire into their accuracy. No one could tell whence most of them came. Yet so engaging was the style in which they were narrated, and so great was the confidence felt in Gall as a narrator, that they were readily accepted by those whose theories they subserved. The psychological conclusion was inevitable. If criminal instincts have separate apartments in the brain, then those criminal

instincts can be separately insane. Hence, the doctrine of *monomania*, sustained at once by Gall's facts and by his hypothesis, began, under the impulse thus imparted, once more to challenge judicial assent.

On our distinctive jurisprudence, the causes just mentioned would have had little influence had it not been for the indirect bearings of another condition. Nothing could have been more barbarous than the old English adjustment of penalty to crime. A man who stole a fowl was capitally punished; and, even after a century of legal reform, the law in England still is that a man who kills another when designing to hurt, but not to kill, is amenable to as high a sentence as he who deliberately assassinates. But humane observers revolted from this subjecting crimes so entirely distinct to the same penalty, and they cast about for some method of relief. In the United States a remedy was seized which was in a large measure efficacious. Murder was divided into two degrees, and capital punishment was reserved exclusively for cases in which there was proved a premeditated intention to take life. On this has been not unfrequently grafted the humane construction that where from mental or nervous excitement the defendant is incapable of forming a specific intent, then the capital offence is not proven.[1] But in England, these mitigating qualifications were not accepted; and though in the United States the division of murder into two degrees was at an early period established almost universally, the courts were at first slow to recognize the fact that a mind disturbed by nervous excitement and blurred by insane predispositions may be incapable of intellectual premeditation, while at the same time capable and responsible for passionate crime. Hence, it has been that the jury has been too often narrowed to a choice between conviction of a capital offence and acquittal; and hence, to justify an acquittal, insanity has sometimes been used as a pretext, when insanity in the correct sense of the term did not exist.

[1] See *infra*, § 200.

This unscientific extension of insanity received a *quasi* scientific sanction under the following circumstances. By the Anglo-American practice, a party is entitled to call on trial any expert he may select; and he is not likely to select any whose views will not promote his cause. It so happens that among the present large body of experts there is little trouble in discovering one or more by whom is maintained the particular psychological theory of which the party on trial stands in need. It is an old truth that there is nothing so absurd but that some philosopher may be found by whom it is affirmed. "Nihil tam absurde dici potest quod non dicatur ab aliquo philosophorum."[1] To sustain a particular defence, for instance, it is necessary to prove that the "morals" may be insane while the mind is sane. The defendant's counsel forthwith proceed to search among the multitudes who have written on insanity, or have been in any way conversant with the insane, for a philosopher by whom this unique hypothesis is held. When the case is tried, this philosopher is produced and swears promptly and positively to his belief. On the strict principles of law, he cannot be cross-examined as to the opinions of others, for this would be hearsay. So far, therefore, as the particular case is concerned, he stands before the jury as if he was the collected sense of the psychological experts of the whole world. It may be that the prosecution may be able to cancel his testimony by the production of a preponderating weight of experts on the other side. But to do so requires energy, skill, and means; and too often has the duty been neglected, and the case left to rest, in criminal trials, on the testimony of the exceptional experts selected by the defence. Hence it is that juries, if not courts, have occasionally succumbed to such testimony in respectful amazement, feeling, indeed, that it is wrong, but not seeing how it could be disregarded.

As influences disturbing the juridical conception of insanity—to recapitulate those which we have just been enumerating in detail—

[1] Cicero, de Divinatione, II. 58.

we may, therefore, mention (1) the romanticism of the French psychological followers of Rousseau, afterwards aided by phrenology, which refined crime into insanity; (2) reaction from the old English barbarism which punished insanity as if it were crime; and (3) the hesitation felt by the courts in grappling with the philosophy of a question which had been claimed to be purely medical. Under these circumstances arose that confusion of law which was noticed in the prior editions of this treatise.

Since 1860, when the second edition was issued, a great change has taken place. Before that period, we may say generally, there had been no positive and final repudiation by psychological science of the theory of criminal monomanias. Since then medical as well as psychological science has rallied, and from all quarters there has risen, as will be hereafter shown more fully, almost an unbroken denunciation of a scheme of psychological romanticism which sober-minded men have learned to feel is as repugnant to science as it is hostile to society.[1] And this advance of science, towards a common reconciliatory stand-point, is now met by a corresponding advance of law. It has been just stated that one of the causes of early juridical confusion on this topic was the revulsion from the excessive punishments assigned by the old law to offences of even lighter grade. Civilization was shocked at seeing a man, who, from nervous or mental or physical disorder, was incapable of cool premeditation or exact intent, hurried to the gallows for what might be a comparatively venial crime; and it was to the desire to save such that the toleration of the idea of irresponsibility in such cases is in a large measure traceable. But it was soon found that this enlargement of irresponsibility worked badly. It exposed many persons, virtually sane, to the pains and penalties of insanity. It enfranchised a dangerous class of outlaws, too insane to be punished for crime, and yet too sane to be restrained. It involved, on the part of the state, the abdication of one of its chiefest functions—the

[1] See *infra*, §§ 552–643.

building up of a right moral sense in those of its subjects in whom such moral sense is deficient.

But is so violent a remedy necessary? Is there no alternative between an unjust conviction of a man of an offence to whose grade of guilt he does not quite reach, and his equally unjust acquittal in the face of evidence showing his guilt of an intermediate grade? It has already been seen that in the United States, at an early day, a statutory approach was made to this result by the beneficent enactments dividing murder into two degrees. But this by itself is not enough. A court may say to a jury, "Here is evidence of premeditation; you must here find either murder in the first degree, or acquit." Eminent jurists, in order to meet this difficulty, have authoritatively advanced positions which have just been incidentally noticed, and will now be stated more fully.

The idea of diminished responsibility, in cases of abnormal excitement, is already familiar to the law. Homicide in hot blood is not murder but manslaughter; yet, what is rage but a short frenzy, and how difficult is it to distinguish such frenzy from the *mania transitoria* of the alienists? A drunken man engages in a brawl and shoots an innocent stranger; and here, as his mind was so stupefied by drink that he was incapable of a specific intent to take life, the offence is reduced to murder in the second degree. Or he receives and passes a counterfeit note when in the same condition, and here his drunkenness is admissible to show that he did not know the note was counterfeit. Or a series of men, swept away by religious or political excitement, fall into such a highly charged and abnormal state of mind that they are incapable of accurate perception, and here, then, homicide committed when in such a state is held to be reduced to murder in the second degree.[1]

How are these last states distinguishable from other well-known exciting influences? What is there that mitigates guilt in cases

[1] See *infra*, § 181.

where the patient is advanced one degree in the insane scale, but will not mitigate it when he is advanced two degrees?

By the Austrian and Bavarian codes this question has been recently answered by the recognition of degrees in penal responsibility. Diminished responsibility (verminderte Zurechnungsfähigkeit) is distinctively and authoritatively defined as a condition in which the mind is incapable of calm and exact premeditation or conception, and to this condition a lesser grade of punishment is assigned. And the same principle is adopted juridically by the North German courts. In England there is no statutory adoption, so far as concerns insanity, of such diminished responsibility, nor have the courts as yet proceeded so far as to look upon nervous or mental disease as lowering the grade of guilt, emphatic as they are in recognizing the entire suspension of responsibility when insanity destroys the capacity of distinguishing between right and wrong. But the reform which the courts, in their distinctively judicial capacity, have felt unable to effect, has been brought about by the joint action of judiciary and executive. Thus in two remarkable cases of homicide, those of Watson and Edmunds, hereafter fully noticed,[1] the defence being insanity, but the proof amounting merely to insane predisposition, or at the highest to a light and incipient stage of insanity, while the jury were directed to convict, yet, after conviction of the capital crime, on application to the crown, in which the judges joined, capital punishment was commuted to imprisonment for life.

In the United States, in construing the statutes already noticed as establishing degrees in homicide, the courts[2] have uniformly held, as has been already noticed, that, when through *drunkenness* the defendant was incapable of premeditation or of specific intent, then only the second degree of murder is reached. The same relaxation has been applied, not only in the United States, but in England, to cases of larceny and other fraudulent crimes when the

[1] See *infra*, §§ 166–173.

[2] See *infra*, §§ 214–227.

party's mental condition was such through drunkenness that he was incapable of guilty knowledge or intent. And in Pennsylvania, in a series of cases of riotous homicide committed by parties in a high state of political and religious excitement, the courts humanely and wisely accepted the principle already stated, that there may be a fury and distraction of mind in which the capacity to comprehend, to compare, to weigh, and to premeditate may be temporarily so far depressed or disturbed as to bring the offence within the definition of murder in the second, as distinguished from that of murder in the first degree.[1]

From the scope of the reasoning which has led to such results, it is impossible to withdraw cases of mental excitement and disturbance, which, though not amounting to such mature insanity as to utterly suspend responsibility, yet prevent the patient from forming calm, premeditated, and specific criminal designs. Slow as have the courts been in reaching this conclusion, we may now regard it as gradually winning judicial acceptance ;[2] and, if so, we may view the law as having received an expansion philosophically consistent with its own principles, and bringing it in full accord with the mature and humane renditions of science. Heretofore "moral insanity" and "insane monomania" have owed the little practical favor they have wrung from courts and juries to the fact that there were cases in which their recognition seemed to be the only way of escaping a verdict which would involve the penalty of death. The consequence was that the public was outraged, sometimes by the acquittal, on the ground of insanity, of men who in no other relation would be viewed as insane, and sometimes by the conviction and execution of men who, though not fully insane, would in no relation be regarded as fully and perfectly responsible. The modification of the law now introduced avoids both these extremes. It says, on the one hand, that men not fully and perfectly insane are not to be acquitted of crime. It says, on the other hand, that they

[1] See *infra*, §§ 181, 200.

[2] See *infra*, § 200.

are not to be convicted of those higher grades of calm and specific guilt of which they were not capable. It judges them according to their lights, and assigns to them that well-known grade of modified guilt which belongs to those who do wrong, wilfully, indeed, and intentionally, but whose illegal acts are the consequents of such passion as destroys in them the capacity of accurate guilty knowledge or complete guilty design.

Such is the shape into which the law of insanity is now gradually settling. That the change is one of natural and logical development will at once be seen; but with regard to it, so far as concerns the question of time, and therefore, so far as concerns the present edition of this work, two circumstances are to be particularly noticed. The first is that the development here spoken of has, on the law side, evidenced itself distinctively in the last ten years. The second is that, on the psychological and medical side, it has only been within the last ten or fifteen years that the opinions of experts and of scientists have presented themselves in such a body as to enable the full voice of science and experience in this relation to be heard. The results on both sides of the inquiry are exhibited in the following pages. What has been just said is mainly designed for the purpose of explaining why the text of the former editions has been in a large measure thrown aside, and why, in its place, is presented what is substantially a new treatise.[1]

The author takes this method of expressing his acknowledgments to T. C. Coogan, Esq., and Nathan Franks, Esq., for aid rendered in examination of authorities.

[1] On the special topic of this preface may be consulted Dr. Hammond on "Reasoning Mania," Jour. Nerv. and Ment. Diseases, Jan. 1882. Attention is also directed to the valuable reports of Mr. Richard Vaux on Prison Discipline.

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MEDICAL JURISPRUDENCE.

BOOK I.

MENTAL UNSOUNDNESS IN ITS LEGAL RELATIONS.

CHAPTER I.

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I. LUNACY.

§ 1. Persons not only apparently but actually destitute of reason are incapable of dealing contractually. Hence the incapacity of idiots, when complete, is absolute. Mere mental imbecility, however, is not sufficient to set aside a contract where there is not an essential privation of the reasoning faculties or an incapacity to understand and act

Lunatics in any view liable for necessaries.

with discretion in the ordinary affairs of life. The law cannot undertake to measure the validity of contracts by the greater or less strength of the understanding; and if the party be *compos mentis*, the mere weakness of his mental powers does not incapacitate him.[1] To sustain a contract made by him, there being no undue advantage taken, it is, in general, sufficient to show that the party contracting knew what he was about.[2] If he is incapable of such knowledge; if, in other words, he is either an idiot or a maniac, not capable of knowing what he is about—then he is incapable of contracting. But in any view it may be regarded as settled both at law and in equity that a lunatic's estate is liable for necessaries furnished to him,[3] and the lunatic himself, or his administrator, and not his guardian, must be sued on such debts.[4]

§ 2. Where the disease is of such a character that lucid intervals exist, the power to contract returns with the return of reason, and

[1] Somers *v.* Pumphrey, 24 Ind. 231, Elliott, C. J.; Mann *v.* Betterly, 21 Vt. 326; Farnum *v.* Brooks, 9 Pick. 212; Baldwin *v.* Dunton, 40 Ill. 188; Titcomb *v.* Vantyle, 84 Ill. 371; Willemin *v.* Dunn, 93 Ill. 511; Campbell *v.* Hooper, 3 Sm. & G. 153; Henderson *v.* McGregor, 30 Wis. 78. The jury may consider how far the party was liable to be deceived, though the incapacity was only partial. Galpin *v.* Wilson, 40 Iowa, 90. See also Shakespeare *v.* Markham, 72 N. Y. 400, and Cadwallader *v.* West, 48 Mo. 483. In this last case it was said that wherever inadequacy of consideration and mental weakness concur, the contract should be annulled. And see Owing's case, 1 Bland, 370, 390.

[2] Lozear *v.* Shields, 23 N. J. Eq. 509; Clearwater *v.* Kimler, 43 Ill. 272; Myatt *v.* Walker, 44 Ill. 485; Emery *v.* Hoyt, 46 Ill. 258; Cadwallader *v.* West, 48 Mo. 483; Ball *v.* Mannin, 3 Bligh (N. S.) 1.

[3] Baxter *v.* Earl of Portsmouth, 5 B. & C. 170; 7 D. & R. 614; Neill *v.* Morley, 9 Ves. Jr. 478; Dane *v.* Kirkwall, 8 C. & P. 679; Sawyer *v.* Lufkin, 56 Me. 308; McCrillis *v.* Bartlett, 8 N. H. 569; Lincoln *v.* Buckmaster, 32 Vt. 652; Kendall *v.* May, 10 Allen, 59; Skidmore *v.* Romaine, 2 Bradf. (N. Y.) 122; La Rue *v.* Gilkyson, 4 Penn. St. 375; Bank *v.* Moore, 78 Penn. St. 407; Matthieson *v.* McMahon, 38 N. J. L. 537; Van Horn *v.* Hann, 39 N. J. L. 207; McCormick *v.* Littler, 85 Ill. 62; Pearl *v.* McDowell, 3 J. J. Marsh. 658; Coleman *v.* Frazer, 3 Bush, 300; Richardson *v.* Strong, 13 Ired. L. 106; Northington *ex parte*, 37 Ala. 496. In Read *v.* Legard, 6 Ex. 636, it was decided that the maintenance and support of a wife is a necessary; where, however, the husband gives his wife a suitable allowance, he is not liable for her debts contracted with a party who knew of his lunacy. Richardson *v.* Dubois, L. R. 5 Q. B. 51. The expenses of a commission are a necessary protection for the party and his estate, even though he is found sane thereby. Nelson *v.* Duncombe, 9 Beav. 211; Williams *v.* Wentworth, 5 Beav. 325.

[4] See Van Horn *v.* Hann, 39 N. J. L. 207.

a contract made in a lucid interval is valid.[1] Since, however, as will presently be seen more fully, insanity of a permanent type is continuous, the party alleging a lucid interval will be required to prove its actual existence.[2] On the other hand, where the disease is in its nature periodic or temporary, the presumption of incapacity does not apply.[3] By a lucid interval, moreover, "is not meant a perfect restoration to reason, but a restoration so far as to be able, beyond doubt, to comprehend and to do the act with such perception, memory, and judgment as to make it a legal act."[4] It is sufficient, to establish such lucid intervals, to prove that the party had sufficiently recovered his reason to know what he was about. A discharge from a lunatic asylum is only *prima facie* evidence of restoration to sanity.[5]

Also liable for contracts during lucid intervals.

§ 3. Nor do delusions or hallucinations avoid capacity if not touching the subject matter of a contract.[6] While every man is presumed to be sane, chronic insanity, when once proved to exist, is presumed to continue.[7] But there is no such presumption of law as to the continuance of a temporary hallucination or delusion arising from disease; the party seeking to avoid a contract by reason of a hallucination must show its existence at the time of making the contract, and that the hallucination was of a character affecting his capacity. To the effect that there is no presumption of permanence in the case of intermittent delusions caused by disease, there are numerous authori-

Monomania does not incapacitate on other topics.

[1] Story on Contracts, § 74; Hall *v.* Warren, 9 Ves. Jr. 605; Tozer *v.* Saturlee, 3 Grant (Pa.), 162; Frazer *v.* Frazer, 2 Del. Ch. 260; McCormick *v.* Littler, 85 Ill. 62; Jones *v.* Perkins, 5 B. Mon. 222; Blakeley *v.* Blakeley, 33 N. J. Eq. 502.

[2] Staples *v.* Wellington, 58 Me. 454; Frazer *v.* Frazer, 2 Del. Ch. 260; Aurentz *v.* Anderson, 3 Pitts. 310; Rush *v.* Megee, 36 Md. 69; State *v.* Reddick, 7 Kan. 143; Atty. Gen. *v.* Parnther, 3 Bro. C. C. 441.

[3] Brown *v.* Riggin, 94 Ill. 560; so of epileptic fits, Carpenter *v.* Carpenter, 8 Bush, 283; Aurentz *v.* Anderson, 3 Pitts. 310.

[4] Frazer *v.* Frazer, *ubi supra*.

[5] Haynes *v.* Swann, 6 Heisk. (Tenn.) 560.

[6] *Infra*, § 34; Staples *v.* Wellington, 58 Me. 453; Dennet *v.* Dennet, 14 N. H. 531; Somes *v.* Skinner, 16 Mass. 348; Osterhout *v.* Shoemaker, 3 Hill (N. Y.) 573; Banks *v.* Goodfellow, L. R. 5 Q. B. 256; so in Lozear *v.* Shields, 23 N. J. Ex. 509, where there was religious monomania; Emery *v.* Hoyt, 46 Ill. 258; Boyce *v.* Smith, 9 Gratt. 704; Lemon *v.* Jenkins, 48 Ga. 313.

[7] Wh. on Ev. § 1252; *supra*, § 2.

ties,[1] and it is now well settled that delusions and hallucinations must directly affect the act in question in order to incapacitate.[2] Whether an existing delusion as to the subject matter of the contract affects the capacity to contract is a question for the jury.[3] But when the delusion or hallucination goes to the essence of the contract, and sways the party when making the contract, then he must be regarded in this relation as without contracting power.[4]

By early authorities lunacy no ground for avoidance.

§ 4. The early common law authorities inclined to the position that, as no man could be allowed to stultify himself, so no man could set up his own insanity at the time of a contract as the ground of avoiding it.[5] At the same time it was conceded that this right of avoidance belonged to the alleged lunatic's heirs and administrators.[6] The restriction, therefore, was purely personal, and was based on a mistaken view of insanity. Insanity was deemed to be perpetual. If it existed at the time of the contract, it existed when suit was brought. If it did not exist when suit was brought, it did not exist at the time of the contract.

The progress of this idea is traced by Blackstone,[7] so far as it relates to the conveyances of lunatics. It seems to have rested chiefly on the authority of Lord Coke, as Fitzherbert, Britton, and Bracton were directly opposed to him.[8] But it cannot be said ever to have been law in America, and has been exploded in England, though followed by Lord Tenterden in 1827.[9]

[1] *Supra*, § 2; Hix *v.* Whittemore, 4 Metc. 545; Turner *v.* Rusk, 53 Md. 65 (1880); Achey *v.* Stephens, 8 Ind. 411.

[2] Cases *supra;* see *infra*, §§ 34 *et seq.*

[3] Jenkins *v.* Morris, L. R. 14 Ch. D. 674 (1880). In this case P., the lessor of certain property, was laboring under the delusion that it was impregnated with sulphur; in other respects he was a shrewd business man. The jury found the lease valid. See *infra*, § 5.

[4] Banks *v.* Goodfellow, L. R. 5 Q. B. 549. And see *infra*, §§ 46, 48.

[5] Co. Litt. 247 *a*.

[6] Co. Litt. 247 *b*. Beverley's case, 4 Rep. 123 *b*.

[7] 2 Bl. Com. 291.

[8] Nat. Brev. 202; Bracton, fol. 100 *a;* Britton, c. 28, fol. 66.

[9] Brown *v.* Joddrell, 3 C. & P. 30. Mr. Pollock says that the doctrine was exploded long before it was adopted by Lord Tenterden. See Pollock on Contracts, p. 78. Stephen, however (1 Com., 7th ed. 475), considers the maxim still to be one of law as regards transactions merely voidable; though it has, he says, no application to transactions absolutely void, such as conveyances other than feoffments.

§ 5. The early doctrine, then, was that the contract of a lunatic could only be avoided after his death by his heirs or representatives; but the cases of Thompson *v.* Leach[1] and Yates *v.* Boen[2] overthrew this, and took the ground that, with the exception of feoffments, which from their solemn nature could be only voidable, the deeds and contracts of persons incompetent not only from insanity, but from drunkenness,[3] were void. And though it was held by Sir Joseph Jekyll that intoxication does not destroy capacity to contract, unless it be shown that the drunkenness was contrived by the other party,[4] Lord Ellenborough inclined to the view that drunkenness by itself is sufficient to avoid an agreement.[5] In this country, several early cases took the ground that the contracts of a lunatic, executed or unexecuted, are *per se* void, unless for necessaries.[6] This is unquestionably correct in cases where the absence of mental capacity is so obvious as to make dealing with the lunatic a fraud. But unless there is such a total deficiency in capacity, it is not reasonable to hold that a contract entered into in good faith with a lunatic is void. Lunacy may be for years latent, and, at all events, where not amounting to idiocy or mania, it is a condition as to which there can be no such fixed and obvious rule laid down as will give security to purchasers. If all contracts of persons mentally unsound are void, no matter what may be the degree of the unsoundness, no title to property of any kind would be secure. Some prior vendor may have been insane; his conveyance was, therefore, void; and hence the title is incomplete. And even against a party contracting immediately with the alleged lunatic, the contract, if *bona fide* and fair on both sides, ought not to be set aside on the ground of latent lunacy.[7]

Subsequent tendency to hold all contracts with lunatics void.

[1] 3 Salk. 300; Comb. 468; 2 Ventr. 198.

[2] 2 Str. 1104.

[3] Cole *v.* Robbins, Bull. N. P. 172.

[4] Johnson *v.* Mellicott, 3 P. Wms. 130.

[5] Pitt *v.* Smith, 3 Camp. 33.

[6] Lang *v.* Whidden, 2 N. H. 435; Burke *v.* Allen, 29 N. H. 106; Mitchell *v.* Kingman, 5 Pick. 431; Seaver *v.* Phelps, 11 Pick. 304; Somes *v.* Skinner, 16 Mass. 348; Grant *v.* Thompson, 4 Conn. 208; Rice *v.* Peck, 15 Johns. 503; La Rue *v.* Gilkyson, 4 Penn. St. 375; Fitzgerald *v.* Reed, 9 Sm. & Marsh. (Miss.) 94. And see the remarks of Strong, J., in Dexter *v.* Hall, 15 Wall. 20.

[7] Searle *v.* Galbraith, 73 Ill. 269. In Jenkins *v.* Morris, L. R. 14 Ch. D. 674, before alluded to, the lessor of a farm believed that it was impregnated with

§ 6. A party dealing with notice with an insane person, except for necessaries, is chargeable with fraud; and where there is fraud independently shown, a comparatively slight degree of mental debility will suffice to sustain a decree setting aside a contract with the party imposed upon.[1] Imbecility, or partial hallucination, if there be fraud, will be a ground for setting aside a contract, which would have been sustained without fraud.[2]

Question conditioned by fraud.

§ 6 *a*. As to strangers, an inquisition of lunacy is only *prima facie* proof of business incompetency, though it binds parties.[3]

Inquisition only *prima facie* proof to third parties.

That it is admissible as *prima facie* proof as to third parties is generally held;[4] though on principle, its admission is open to the serious objection of being *res inter alios acta*.[5]

§ 7. That when a contract has been produced by fraud, acting upon mental debility or eccentricity, it will be set aside in equity, is settled.[6] And it is further settled that the mere act of contracting with a lunatic, except for necessaries, is fraudulent in all cases

sulphur, and was at the pains to try many experiments to rid himself of it. A jury found him of sufficient business capacity to make a valid lease thereof. The Court of Appeals refused to disturb the verdict.

[1] Gartside *v.* Isherwood, 1 Bro. C. C. 558; Dane *v.* Kirkwall, 8 C. & P. 679; Den *v.* Bennett, 7 Sims, 539; Rhodes *v.* Bate, L. R. 1 Ch. App. 252; Grant *v.* Thompson, 4 Conn. 208; Seeley *v.* Price, 14 Mich. 541; Henderson *v.* McGregor, 30 Wis. 78; Rutherford *v.* Ruff, 4 Dessaus. 350.

[2] Beals *v.* See, 10 Penn. St. 56; Jones *v.* Perkins, 5 B. Mon. 222; Keeble *v.* Cummins, 5 Hayw. 43.

[3] See Wh. on Ev. §§ 812, 1254. See also Hirsch *v.* Trainer, 3 Abb. (N. Y.) N. Cas. 274; Faulder *v.* Silk, 3 Camp. 126, per Lord Ellenborough. See other cases cited in Wh. on Ev. § 1254.

[4] Sargeson *v.* Sealey, 2 Atk. 412; Stone *v.* Damon, 12 Mass. 488; Breed *v.* Pratt, 18 Pick. 115; Crowninshield *v.* Crowninshield, 2 Gray, 524; Hart *v.* Deamer, 6 Wend. 497; Hicks *v.* Marshall, 8 Hun, 327; Goodell *v.* Harrington, 3 Thomp. & C. 345; Hutchinson *v.* Sandt, 4 Rawle, 234; Bank *v.* Moore, 78 Penn. St. 407; Kneedler's App., 92 Penn. St. 428.

[5] See, as sustaining admissibility of such records, Dexter *v.* Hall, 15 Wallace, 9; Caulkins *v.* Fry, 35 Conn. 170; Burke *v.* Allen, 29 N. H. 106; L'Amoreux *v.* Crosby, 2 Paige, 422; Fitzhugh *v.* Wilcox, 12 Barb. 235; Wadsworth *v.* Sherman, 14 Barb. 169; Nichol *v.* Thomas, 53 Ind. 53; Elston *v.* Jasper, 45 Tex. 409. In Lagay *v.* Marston, 32 La. Ann. 170, the finding of a commission that the person was *notoriously* insane was treated as affording the presumption that a party who had previously contracted with her must have been warned of her condition.

[6] Shakespeare *v.* Markham, 72 N. Y.

where the lunacy, to the knowledge of the other contracting party, extends to the subject matter of the contract.[1] If we assume that in the case of lunatics there is an absence of consenting mind, the principle involved in this question is analogous to that by which the deed of an illiterate person, who has been deceived as to the contents thereof, is held void.[2] Agreeably to this principle the contracts of a lunatic, made under the circumstances given above, have been considered to be void in several recent American cases.[3] A more satisfactory conclusion, however, is established by the English cases of Molton *v.* Camroux[4] and Matthews *v.* Baxter.[5] In the latter case Kelley, C. B., said: "It has been argued that a contract made by a person who was in the position of the defendant, is absolutely void. But it is difficult to understand this contention. For, surely, the defendant, upon coming to his senses, might have said to the plaintiff, 'true, I was drunk when I made this contract, but still I mean, now that I am sober, to hold you to it.' And if the defendant could say this, there must be a reciprocal right in the other party."[6]

Better opinion that contracts by lunatics are voidable at option.

400; Garrow *v.* Brown, 1 Wins. (N. C.) No. 2, Eq. 49; Rutherford *v.* Ruff, 4 Dessaus. 350; Seely *v.* Price, 14 Mich. 541; Jacox *v.* Jacox, 40 Mich. 473; Taylor *v.* Patrick, 1 Bibb, 168; Wilson *v.* Oldham, 12 B. Mon. 55; Birdsong *v.* Birdsong, 2 Head. 289; Killian *v.* Badgett, 27 Ark. 166; Henderson *v.* McGregor, 30 Wis. 78. In Moore *v.* Hershey, 90 Penn. St. 196, Paxon, J., held that the indorsement of a promissory note by a lunatic could be inquired into, and fraud, knowledge of the lunacy, or want of consideration set up as a defence. See Wirebach *v.* Bank, 10 W. N. C. (Pa.) 143; *infra*, § 8.

[1] Price *v.* Berrington, 7 Hare, 402; Shadwell, V. C., Lincoln *v.* Buckmaster, 32 Vt. 652; Henderson *v.* McGregor, 30 Wis. 78; Lagay *v.* Marston, 32 La. Ann. 170. Story on Contracts, § 83. But see Curtis *v.* Brownell, 42 Mich. 165, 171, where it seems to be hinted that this presumption of fraud may be overcome by conduct of the lunatic indicating a restoration to reason. And the presumption may be rebutted, and equity will not interfere except on equitable principles. Where the lunatic has had the benefit of the contract, it will be upheld. Canfield *v.* Fairbank, 63 Barb. 461; Jones *v.* Perkins, 5 B. Mon. 222.

[2] See Pollock on Contracts, Am. ed. 402, 406, and cases cited.

[3] See notes to § 6; Encking *v.* Simmons, 28 Wis. 272 (1871). Hines *v.* Potts, 56 Miss. 346 (1879), goes further than the statement in the text. See Bank *v.* McCoy, 69 Penn. St. 209; Hope *v.* Everhart, 70 Penn. St. 231 (1871); Marmon *v.* Marmon, 47 Iowa, 121. See also Wilson *v.* Oldham, 12 B. Mon. 55; and *infra*, § 15, for cases dealing with intoxication on the same principle.

[4] 4 Exch. 17; 2 Exch. 486.

[5] L. R. 8 Exch. 132.

[6] L. R. 8 Exch. 133.

The same observations may be made as to persons temporarily, though not obviously, insane. Sufficient protection to persons of this class is afforded by holding their contracts voidable when it is shown that their incapacity was known or practised upon, while the transaction of business is assisted by the opportunity given in lucid intervals, or upon recovery, for the ratification of contracts really conducive to the interests of both parties. In this country there is a growing tendency to adopt the English rule, both as more fair and more philosophical.[1]

Contracts executed in good faith will be sustained.

§ 8. We may therefore hold it to be settled by the weight of authority, that a contract made with a lunatic in good faith and in ignorance of his incapacity cannot, after the property has been obtained and enjoyed by the lunatic, be set aside or defeated by the latter or his representatives, unless the parties can be put *in statu quo*. Or, to adopt the words of Pollock, C. B.:[2] "Where a person, apparently of sound mind, and not known to be otherwise, enters into a contract for the purchase of property, which is fair and *bonâ fide*, and which is executed and completed, and the property, the subject matter of the contract, has been paid for and fully enjoyed, and cannot be destroyed, so as to put the parties *in statu quo*, such contract cannot afterwards be set aside, either by the alleged lunatic, or those who represent him."

This conclusion is sustained in America by numerous adjudications.[3]

[1] Murray *v.* Carlin, 67 Ill. 286; Searle *v.* Galbraith, 73 Ill. 269; Titcomb *v.* Vantyle, 84 Ill. 371; McCormick *v.* Littler, 85 Ill. 62; Willemin *v.* Dunn, 93 Ill. 511. In other cases, while the rulings went off on collateral points, the reasoning of the judges rested on the principles stated in the text. Matthieson *v.* McMahon, 38 N. J. L. 537; Turner *v.* Rusk, 53 Md. 65; Freed *v.* Brown, 55 Ind. 310. But see Evans *v.* Horan, 52 Md. 610.

In Blakeley *v.* Blakeley, 33 N. J. Eq. 502, the question in the text is discussed with much ability, and a learned note by the reporter is given, in which numerous cases are cited. It is shown by abundant authority that contracts by lunatics are open to ratification.

[2] Molton *v.* Camroux, 2 Exch. 503.

[3] Kendall *v.* May, 10 Allen, 59; Young *v.* Stevens, 48 N. H. 133; Fitzhugh *v.* Wilcox, 12 Barb. 235; Loomis *v.* Spencer, 2 Paige, 158; Riggs *v.* The Society, 19 Hun, 481; Ins. Co. *v.* Hunt, 79 N. Y. 541; Beals *v.* See, 10 Penn. St. 56; Kneedler's App., 92 Penn. St. 428; Yauger *v.* Skinner, 14 N. J. Eq. 389; Matthieson *v.* McMahon, *supra;* Lozear *v.* Shields, *ubi supra;* Wilder *v.* Weakley, 34 Ind. 181; Behrens *v.*

§ 9. While, however, the prevalent opinion now is that an ordinary business contract with a lunatic, when fair, and by a party having no notice of his mental disability, will be sustained, there is still much difference of opinion as to whether title to real estate can be passed by a person at the time a lunatic, no matter how completely his lunacy may have been disguised. Some of the earlier authorities recognize the distinction taken in Thompson *v.* Leach[1] between a deed of feoffment and a deed of bargain and sale, holding the latter absolutely void.[2] The supreme court of the United States has accepted this position.[3]

Conflict as to whether deeds are voidable.

In Massachusetts it has been held that while a deed of bargain

McKinsie, 23 Iowa, 333; Allen *v.* Berryhill, 27 Iowa, 450; Ashcraft *v.* De Armand, 44 Iowa, 229; Sims *v.* McClure, 8 Rich. Eq. 286; Rusk *v.* Fenton, 14 Bush, 490; Northington *ex parte*, 37 Ala. 496; Beller *v.* Jones, 22 Ark. 92; Henry *v.* Fine, 23 Ark. 417; Carr *v.* Holliday, 5 Ired. Eq. 167; Encking *v.* Simmons, 28 Wis. 272; Henderson *v.* McGregor, 30 Wis. 78. If the contract be executory it will not be upheld. Story on Contracts, 5th ed. § 83; Skidmore *v.* Romaine, 2 Bradf. (N. Y.) 122. But see Beavan *v.* McDonnell, 9 Exch. 309, 10 Exch. 184. In a late case (1881) in Pennsylvania, Judge Trunkey, in holding the accommodation indorsement of a promissory note by a lunatic void, laid down the general principle that "there can be no binding executory agreement where one of the parties is bereft of reason." Wirebach *v.* Bank, 10 W. N. C. 145. For other English cases following Molton *v.* Camroux, see Price *v.* Berrington, 7 Hare, 394; Dane *v.* Kirkwall, 8 C. & P. 679; Beavan *v.* McDonnell, 10 Exch. 184; Hassard *v.* Smith, 6 Ir. Eq. 429.

[1] *Supra*, § 5. By statute in England the feoffments of a lunatic are now void. See 1 Steph. Com. 7th ed. 475. See also Pollock on Contracts, Am. ed. p. 80, 406.

[2] It was thus held in Pennsylvania. De Silver's Est., 5 Rawle, 111; Rogers *v.* Walker, 6 Penn. St. 371. In this state deeds of bargain and sale have, by statute, the same effect as livery of seisin; but the late cases agree with Gibson *v.* Soper, 6 Gray, 279, in holding that the lunatic may ratify his deed, and hence that it is to that extent only voidable. But "when there is no evidence of ratification after restoration to reason, it is impossible upon legal principles that the estate passed to the grantee in the deed." *Semble*, that retention of the consideration after a return to sanity would be such evidence; but if the deed be avoided during the insanity the consideration need not be returned. *Per* Trunkey, J., Crawford *v.* Scovel, 8 W. N. C. 364 (1880).

[3] Dexter *v.* Hall, 15 Wallace, 9. In this case, Mr. Justice Strong, in dealing with the power of attorney of a lunatic, took the ground that by common law his conveyances, other than by feoffment, are absolutely void; *a fortiori* his power of attorney. Other cases holding the deed of a lunatic absolutely void do not seem to notice the distinction. Van Deusen *v.* Sweet, 51 N. Y. 378; Farley *v.* Parker, 6 Oreg. 105.

and sale is in this country equivalent to a feoffment, and of an equal solemnity, the deeds of lunatics, like the deeds of infants, though voidable, may be ratified.[1] To the extent of holding the deed of a lunatic not under guardianship voidable only, this is sustained by numerous other authorities,[2] though the appointment of a guardian may avoid subsequent deeds.[3]

On rescission parties to be placed *in statu quo*.

§ 10. The case of Gibson *v.* Soper[4] pushed the doctrine in Massachusetts to the length that, on suit for avoidance brought, restitution of the consideration by the lunatic is unnecessary as a condition precedent, unless the lunatic be restored to reason, and seeks inequitably to use his prior lunacy as an engine of fraud.[5] But the better opinion is that the parties must be placed *in statu quo*, unless there has been actual fraud.[6]

Partnership contract not dissolved *ipso facto* by lunacy.

§ 11. The findings of a commission of lunacy are not regarded as dissolving a partnership contract *ipso facto*. To work such a dissolution the decree of a court of equity must be had; and this will not be given where the insanity is only temporary.[7] The point does not seem ever to have been decided whether a partnership contract entered into by one already found a lunatic would be valid until set aside

[1] Allis *v.* Billings, 6 Metc. 415; Arnold *v.* Richmond Iron Works, 1 Gray, 434; Gibson *v.* Soper, 6 Gray, 279; Howe *v.* Howe, 99 Mass. 88; Valpey *v.* Rea (S. C. Mass. 1881), 24 Albany L. J. 137.

[2] Hovey *v.* Hobson, 53 Me. 451; Eaton *v.* Eaton, 37 N. J. L. 108; Key *v.* Davis, 1 Md. 82; Chew *v.* Bank, 14 Md. 299; Evans *v.* Horan, 52 Md. 602; Rusk *v.* Fenton, 14 Bush. 490; Ashcraft *v.* De Armand, 44 Iowa, 229; Nichol *v.* Thomas, 53 Ind. 42; Freed *v.* Brown, 55 Ind. 310; Elston *v.* Jasper, 45 Tex. 409; Scanlan *v.* Cobb, 85 Ill. 296. The action may be brought by the lunatic or by his guardian; cases *supra*, and see Crawford *v.* Scovel, *supra*. *Contra*, Nichol *v.* Thomas, *supra*. The lunatic cannot file a bill in equity, till he is restored to mind. Turner *v.* Rusk, 53 Md. 65. See *infra*, § 14.

[3] Hovey *v.* Hobson, Nichol *v.* Thomas, Freed *v.* Brown, Elston *v.* Jasper, *supra*; see Eaton *v.* Eaton, Rusk *v.* Fenton, *supra*.

[4] 6 Gray, 279.

[5] *Per* Thomas, J. See, to same effect, Crawford *v.* Scovel, 8 W. N. C. (Pa.) 364; Hovey *v.* Hobson, Nichol *v.* Thomas, *supra*. *Cf.* Lagay *v.* Marston, 32 La. Ann. 170.

[6] Eaton *v.* Eaton, Evans *v.* Horan, Scanlan *v.* Cobb, Ashcraft *v.* De Armand, Rusk *v.* Fenton, *supra*.

[7] Lindley, 4th ed. 1, *226; Collyer, 6th ed. Am. notes, 1, 152 n. See *contra*, Story, § 295. That an inquest dissolves a partnership, see Isler *v.* Baker, 6 Humph. 85.

by the lunatic or his representatives; but where entered into *bona fide* on the part of the other party it might be argued that the rights of third parties require it to be held binding until dissolved.

Administrators may avoid contract of insane decedent.

§ 12. Where the contract of an alleged lunatic is voidable, it may be avoided by his executors or administrator, or by his heirs.[1]

And so of representatives and guardians.

§ 13. So the guardian, committee, curator, or assignee in lunacy, whatever may be his official title, may contest before the proper court his ward's prior dealings, and may either disavow and rescind or ratify the lunatic's contracts made during lunacy.[2]

And so of a party himself.

§ 14. Notwithstanding the position taken in the older books that no man can stultify himself by alleging his lunacy at a prior period, it is now settled, as has been already incidentally seen, that a person who has been insane, and when insane makes a contract, can, on his restoration to sound mind, contest the validity of the contract.[3]

Lunatic liable for torts.

§ 15. A lunatic is liable for his torts so far as to subject his estate to a suit for damages worked to others by its negligent management. On principle, however, he cannot be held liable for malicious acts in cases where he is not *capax doli*.[4]

II. INTOXICATION.

§ 16. A drunkard, *voluntarius dæmon*, is not entitled to the same consideration as persons rendered incapable by the visitation

[1] Beverley's case, 4 Rep. 123 *b*. See Gibson *v.* Soper, 6 Gray, 279.

[2] 2 Bl. Com. 292. McCrillis *v.* Bartlett, 8 N. H. 569; Gibson *v.* Soper, *supra*. In Baker *v.* Baker, L. R. 5 P. D. 145, it was held that the committee of the estate of a lunatic, as against the committee of the person, was the proper party to bring a proceeding for divorce on account of the adultery of the lunatic's wife.

[3] Gibson *v.* Soper, *ubi supra*; Crawford *v.* Scovel, 8 W. N. C. (Pa.) 364; Turner *v.* Rusk, 53 Md. 65; the same principle applying as in the case of infants. But where the party is under guardianship, the action must be brought by the guardian. Nichol *v.* Thomas, 53 Ind. 42. It would seem to be impossible that the action should be allowed to be brought by the other party. Allen *v.* Berryhill, 27 Iowa, 540.

[4] See the cases collected in Ewell's Leading Cases, pp. 635, 638, 642, n.; Wh. Neg. §§ 87, 88, 306, 307. As to responsibility for malicious acts, see Wh. Cr. L., 8th ed. § 82 *et seq*.

of God. A lunatic is "incapable of committing a crime or making a contract, yet it is common to speak of his torts and his contracts, and on many of them he is liable in a civil action;"[1] it is for the protection of others who do not know of his incapacity that his contracts when fair are upheld, and his misdeeds, when injurious, are compensated for. But drunkenness, so far from being a defence to the merits in actions for torts, may be an aggravation,[2] and in actions *ex contractu*, the validity of the transaction depends upon its fairness. A party taking advantage of another's incapacity from drunkenness will not be allowed the aid of the law to enforce an unfair bargain thus obtained. But in cases where one of the parties to a contract was, at the time it was made, intoxicated, to an extent not depriving him of business capacity, he cannot, after having received the benefit of the contract, supposing it to be fair and reasonable, be allowed to rescind it; and in any view executory contracts by persons excited by drink should be considered only voidable, open to ratification when the party is sober.[3]

Intoxication, unless excessive, no ground for avoiding contract.

[1] Trunkey, J., in Wirebach *v.* Bank, 10 W. N. C. (Pa.) on p. 144. See also the remarks of Drake, J., in Burroughs *v.* Richman, 13 N. J. L. 233.

[2] Wh. on Neg. § 306.

[3] In Gore *v.* Gibson, 13 M. & W. 623, a case which has been cited with approbation in many American decisions, it was held that the contract of a man too drunk to know what he was about, is absolutely void, confirming Lord Ellenborough's ruling in Pitt *v.* Smith, 3 Camp. 33. But the later case of Matthews *v.* Baxter, L. R. 8 Ex. 132, has modified this, and decides, in accordance with the principles stated in the text, that such a contract, even though executory, is voidable only. In this country the earlier authorities fall in the line of Pitt *v.* Smith, and hold the contracts of drunkards void. Caulkins *v.* Fry, 35 Conn. 170; Jenners *v.* Howard, 6 Blackf. 240; Drummond *v.* Hopper, 4 Harring. 327; Wade *v.* Colvert, 2 Mill's Const. N. S. 27; Fitzgerald *v.* Reed, 17 Miss. 94; Newell *v.* Fisher, 19 Miss. 431. As to statutory rule in New Hampshire, see McCrillis *v.* Bartlett, 8 N. H. 569. As to Vermont, see Barret *v.* Buxton, 2 Aiken, 167; Foote *v.* Tewksbury, 2 Vt. 97. And so if fraud is practised (but whether the contract would stand if not procured by fraud, not decided). King *v.* Bryant, 2 Hayw. 591. That a promissory note given by one when drunk is void against the payee, see Bank *v.* McCoy, 69 Penn. St. 204, where the evidence was that the maker of the note was at the time "wholly unconscious of what he was doing." It was held, however, that in the hands of a *bona fide* indorser for value, the note is good. In Connecticut it was intimated in 1868, on the authority of 1 Parsons on Bills and Notes, 171, that if the incapacity was complete, it would be as valid a defence against the indorsee as the payee; Caulkins *v.* Fry, 35 Conn. 170. A better rule is furnished by the

§ 16 *a*. The inference of fraud is strong when one contracting party knows of the other's disability, and when the bargain is on its face unfair and unequal. Attempts at fraudulent dealing are, under such circumstances, indications from which the jury may judge as to the probability of the party's being deceived. Where advantage has been taken, the contracts will always be avoided, and upon slight evidence, especially when the drunkenness has been contrived by the other party.[1] But they cannot be deemed absolutely void, as they may be ratified.

Otherwise when acted on by fraud

case of Miller *v.* Finley, 26 Mich. 249 (at p. 254), where a note made by a man when drunk was held good in the hands of the indorsee, but only voidable as against the payee. In unison with this case are some old, and most of the late cases, which hold the contracts of a drunkard only voidable. Walker *v.* Davis, 1 Gray, 506, at p. 508;—in Foss *v.* Hildreth, 10 Allen, 76, at p. 79, the word void is used, it is true, but taken in connection with the facts, it will be seen to refer only to the particular case;—Burroughs *v.* Richman, 13 N. J. L. 233; Reinicker *v.* Smith, 2 Harr. & John. 421, 423; Johns *v.* Fritchey, 39 Md. 258; Wigglesworth *v.* Steers, 1 Hen. & Munf. 70; Mansfield *v.* Watson, 2 Iowa, 111; Reynolds *v.* Dechaums, 24 Tex. 174; Cumings *v.* Henry, 10 Ind. 109; Joest *v.* Williams, 42 Ind. 565; Broadwater *v.* Darne, 10 Mo. 277; Eaton *v.* Perry, 29 Mo. 96; Darby *v.* Cabanné, 1 Mo. App. 126; Cavender *v.* Waddingham, 5 Mo. App. 457; Bates *v.* Bates, 72 Ill. 108; Williams *v.* Inabnet, 1 Bailey, 343; Phelan *v.* Gardiner, 43 Cal. 306. In Joest *v.* Williams, *ut supra*, a contract of sale had been executed, and was on its face reasonable, but the intoxicated party was allowed to refund the consideration and rescind the contract. The cases agree that the mere fact of intoxication is not *prima facie* proof of incompetency; it must be a degree of drunkenness producing entire incapacity. See, among other cases, Johns *v.* Fritchey, Cavender *v.* Waddingham, Bates *v.* Bates, *ut supra*, and Pickett *v.* Sutter, 5 Cal. 412. It is for the jury to determine whether the party's intoxication was such as to render him either incapable of contracting or to expose him an easy victim to fraud.

[1] That a promise unfairly obtained from a drunken promiser will not be enforced, see Pitt *v.* Smith, 3 Camp. 33; Cory *v.* Cory, 1 Ves. Sen. 19; Say *v.* Barwick, 1 Ves. & B. 196; Gore *v.* Gibson, 3 M. & W. 623; Cooke *v.* Clayworth, 8 Ves. 12; Bliss *v.* R. R., 24 Vt. 424; Mitchell *v.* Kingmans, 5 Pick. 431; Rice *v.* Peck, 15 Johns. 503; Wager *v.* Reid, 3 T. & C. (N. Y.) 332; Hutchinson *v.* Tindall, 3 N. J. Eq. 357; Campbell *v.* Spencer, 2 Binn. 133; Wilson *v.* Bigger, 7 Watts & S. 111; Dulaney *v.* Green, 4 Harring. (Del.) 285; Johns *v.* Fritchey, 39 Md. 258; Menkins *v.* Lightner, 18 Ill. 282; Scanlan *v.* Cobb, 85 Ill. 296; Mansfield *v.* Watson, 2 Iowa, 111; Jones *v.* Perkins, 5 B. Mon. 222; Richardson *v.* Strong, 13 Ired. L. 106; Morrison *v.* McLeod, 2 Dev. & B. 226. See also other cases in the preceding and succeeding paragraphs.

§ 16 *b*. Courts of equity will relieve against contracts entered into in a state of intoxication: (1) where the intoxication produced mental incapacity; and (2) where it produced mental excitement, subjecting the party to the undue influence of the other contracting party, who thereby gains an unfair advantage.[1]

Rule in equity.

§ 16 *c*. A drunkard, like a lunatic, will be held liable for necessaries requisite for his support,[2] though in such cases the suit should be for goods sold and delivered, and not on account stated.[3]

Drunkard liable for necessaries.

III. MARRIAGE CONTRACTS.

§ 17. A person incapable of solemnizing other contracts is incapable of solemnizing the contract of matrimony.[3] The marriage of an absolute lunatic, therefore, may be subsequently annulled.[4] On the other hand, such a mar-

Distinctive rule as to marriage.

[1] Wigglesworth *v.* Steers, 1 Hen. & Munf. 70; Birdsong *v.* Birdsong, 2 Head, 289; Belcher *v.* Belcher, 10 Yerg. 121; French *v.* French, 8 Ohio, 214; Mansfield *v.* Watson, 2 Iowa, 111, at p. 115. But that equity will only relieve where fraud has been practised, and not otherwise, see Hutchinson *v.* Brown, 1 Clarke, 408; Prentice *v.* Achorn, 2 Paige, 30; Wager *v.* Reid, 3 T. & C. (N. Y.) 332; Seymour *v.* Delancy, 3 Cowen, 445; Pittenger *v.* Pittenger, 3 N. J. Eq. 156; Hutchinson *v.* Tindall, 3 N. J. Eq. 357; Jones *v.* Perkins, 5 B. Mon. 222; Scanlan *v.* Cobb, 85 Ill. 296, at p. 298; White *v.* Cox, 4 Hayw. (Tenn.) 213; Campbell *v.* Ketcham, 1 Bibb, 406; Rutherford *v.* Ruff, 4 Dessaus. 350; Johnson *v.* Medlicott, 3 P. Wms. 130; Shaw *v.* Thackray, 3 Sm. & G. 537.

[2] Cooke *v.* Clayworth, 18 Ves. Jr. 15; Gore *v.* Gibson, 13 M. & W. 623; Sawyer *v.* Lufkin, 56 Me. 309; McCrillis *v.* Bartlett, 8 N. H. 569; Kendall *v.* May, 10 Allen, 59; Seymour *v.* Delancy, 3 Cowen, 445; Van Horn *v.* Hann, 39 N. J. L. 207; Jenners *v.* Howard, 6 Blackf. 240; Darby *v.* Cabanné, 1 Mo. App. 126; so in equity, Jones *v.* Perkins, 5 B. Mon. 222. As necessaries may be considered expense of suits undertaken for the protection of the drunkard or of his estate. Meares *in re*, L. R. 10 Ch. D. 552; Hallet *v.* Oakes, 1 Cush. 296.

[3] Atkinson *v.* Medford, 46 Me. 510; Banker *v.* Banker, 63 N. Y. 409; Cole *v.* Cole, 5 Sneed (Tenn.), 57; Ward *v.* Dulaney, 23 Miss. 410; Browning *v.* Reane, 2 Phill. 169; but it is said in Hancock *v.* Peaty, L. R. 1 P. & D. 335, that "the question for the court is, whether the mind of the contracting party is diseased or not at the time of the contract, and if the evidence establishes that the mind was, at the time of entering the contract, diseased, the court will not enter into the extent of the derangement." *Per* Lord Penzance.

[4] Bishop, Mar. & Div. 6th ed. § 135; Turner *v.* Meyers, 1 Hagg. Con. 414; Middleborough *v.* Rochester, 12 Mass. 363; Wightman *v.* Wightman, 4 Johns. Ch. 343; Ward *v.* Dulaney, 23 Miss. 410; Crump *v.* Morgan, 3 Ired. Eq. 91; Foster *v.* Means, 1 Speers' Eq. 569; Rawdon *v.* Rawdon, 28 Ala. 565. So

riage may be ratified by the party when restored to capacity.[1] Although, to justify a decree of nullity, there must be an undoubted unsoundness at the time of marriage,[2] yet in marriage, as in other contracts, fraud or coercion, when brought to bear on a person of weak mind, will work an avoidance which, without such fraud or compulsion, would not have been decreed.[3]

intoxication, Clement *v.* Mattison, 3 Rich. 93. In New York, under the Revised Statutes, a marriage by a lunatic is only voidable. Stuckey *v.* Mathes, 24 Hun, 461.

[1] Cohabitation is strong evidence of such ratification. See Bishop, Mar. & Div. *ut supra*. Cole *v.* Cole, 5 Sneed, 57. In Rawdon *v.* Rawdon, *supra*, it was held that the right to a decree of nullity would be barred by the lapse of time—in this case twenty-two years had elapsed. And in Wiser *v.* Lockwood, 42 Vt. 720, it was held that the marriage could not be impeached after the death of the lunatic. In Hancock *v.* Peaty, L. R. 1 P. & D. 335, it was alleged that the lunatic had recovered; in which case Lord Penzance said he would annul the marriage at her request only. *Contra*, that there can be no confirmation, Crump *v.* Morgan, 3 Ired. Eq. 91; Ward *v.* Dulaney, 23 Miss. 410.

[2] Banker *v.* Banker, 63 N. Y. 409.

[3] The leading case on this point is that of Lord Portsmouth, 1 Hagg. Ecc. 355. See also Browning *v.* Reane, 2 Phill. 69. Lord Portsmouth's case was, shortly stated, as follows: Lord Portsmouth was married for the second time in March, 1813, to a young woman who was the daughter of one of his trustees, the solicitor of the family, under whose charge he was at the time living. From earliest childhood he had displayed great weakness, both moral and mental, being cruel, timid, and fickle in his management of his household, and exceedingly capricious in his tastes. Upon his arrival at twenty-one, however, his incapacity was such as to induce his family to take steps to put him under the charge of a committee, and at their instance he joined with his father in suffering common recoveries, and making a new settlement of the estate. It was not disputed that he mixed in society generally, corresponded with his friends, and settled his own accounts with his steward. His first marriage was in 1799, and took place under a family arrangement, with a lady several years older than himself, who it was understood took a general supervision of his affairs. In the settlement made at that marriage, the father of his second wife was one of the trustees. The first wife died in November, 1813, and in February, 1814, Lord Portsmouth went down to London with his medical attendant, and being left in his trustee's hands, a week afterwards contracted a second marriage to the trustee's daughter. In 1823, not until after the birth of a child, which took place in 1822, a commission was issued to inquire into his lunacy, the result of which, after a long contest, was a finding that he was of unsound mind, and had been so since January, 1809. The committee appointed under this procedure immediately filed a petition in the ecclesiastical court to annul the second marriage. Sir John Nicholl, in deciding the case, said: "That considerable weakness of mind, circumvented by

Rule as to divorce.

§ 18. It has been argued that, as an insane person cannot consent to adultery, a decree of divorce on ground

proportionate fraud, will vitiate the fact of marriage, whether the fraud is practised on his ward by a party who stands in the relation of a guardian, as in the case of Harford against Morris (2 Hag. Cons. R. 423), which was decided principally on the ground of fraud; or whether it is effected by a trustee, procuring the solemnization of the marriage of his own daughter with a person of very weak mind, over whom he has acquired great ascendency. A person incapable from weakness of detecting the fraud, and of resisting the ascendency practised in obtaining his consent to the contract, can hardly be considered as binding himself in point of law by such an act. At all events, the circumstances preceding and attending the marriage itself may materially tend to show that the contracting party was of unsound mind, and was so considered and treated by the parties engaged in fraudulently effecting the marriage. In respect to Lord Portsmouth's unsoundness of mind, the case set up is of a mixed nature, not absolute idiocy, but weakness of understanding; not continued insanity, but delusions and irrationality on particular subjects. Absolute idiocy, or constant insanity, would have carried with them their own security; for in either case, the forms preceding, and the ceremony itself, could not have been gone through without exposure and detection; but here a mixture of both, by no means uncommon, is set up—considerable natural weakness, growing at length, from being left to itself and uncontrolled, into practices so irrational and unnatural as in some instances to be bordering on idiocy, and in others to be attended with actual delusion—a perversion of mind—a deranged imagination—a fancy and belief of the existence of things which no rational being, no person possessed of his powers of reason and judgment, could possibly believe to exist. . . . It appeared that February, 1814, Lord Portsmouth was brought to London by his medical attendant, and delivered up to his trustees, Hanson being one, and then in town—that day week he was married to the daughter of Mr. Hanson. The confidential solicitor of the family, one of the trustees, who had a great ascendency over him, who owed him every possible protection, married him to one of his daughters! It is unnecessary to state the jealousy with which the law looks at all transactions between parties standing in these relations to each other. The whole transaction will bear but one interpretation: every part of it is the act of the Hansons! Lord Portsmouth is a mere instrument in their hands, to go through with the necessary forms; the settlement is begun in forty-eight hours after Lord Portsmouth's arrival in London! The contents of that settlement; the mode in which it was prepared; the concealment of the whole from the friends and the other trustees who were in town, some in the same house with Lord Portsmouth: all these particulars bear the same character. The necessary forms are gone through with, but in support of these mere forms, not a witness is produced to show that this nobleman was conducting himself as a man understanding what he was doing, or capable of judging, or acting as a free and intelligent agent; nothing tending to show he was a person of sound mind; nothing in his conduct inconsistent with unsoundness of mind: every circumstance conspires

of adultery cannot be granted against an insane person.[1] To this it may be replied that divorce statutes are meant to relieve parties from intolerable wrong, and the wrong of adultery is none the less intolerable because the party committing it was insane.[2] This view was intimated in England in the Mordaunt case, although that case was decided upon the peculiar construction of a statute.[3] The insanity of either party is now held no bar to a divorce in England;[4] but in this country it has been held that a divorce will not be decreed in favor of an insane plaintiff.[5]

to prove that he was the mere puppet of the Hanson family, and that the celebration of this marriage was brought about by a conspiracy among them to circumvent Lord Portsmouth, over whom they, and particularly the father, had a complete ascendency, so as to destroy all free agency and rational consent on his part to this marriage. A marriage so had wants the essential ingredient to make the contract valid —the consent of a free and rational agent. The marriage itself, and the circumstances immediately connected with it, do not tend to establish restored sanity; it was neither 'a rational act' nor was it 'rationally done'—the whole 'sounds to folly' and negatives sanity of mind. The Hansons, in the mode of planning and conducting the transaction, show that they treated and considered Lord Portsmouth as a person of unsound mind, and Lord Portsmouth, in submitting and acquiescing, and not resisting, confirms his own incompetency. Even if no actual unsoundness of mind, strictly so called—if no insane derangement—existed, if only weakness of mind (and all admit that he was weak), yet, considering the passiveness and timidity of his character on the one hand, the influence and relation of Hanson, his trustee, on the other, and the clandestinity and other marks of fraud which accompanied the whole transaction, I am by no means prepared to say, that, without actual derangement in the strict sense, the marriage would not be invalid; but in my judgment Lord Portsmouth was of unsound mind, as well as circumvented by fraud."

[1] Nichols *v.* Nichols, 31 Vt. 328; Wray *v.* Wray, 19 Ala. 522; Rathbun *v.* Rathbun, 40 How. Pr. 328. But the suit may be brought against them while insane for adultery committed when sane. Ib.

[2] Matchin *v.* Matchin, 6 Penn. St. 332.

[3] Stat. 20 & 21 Vict. c. 85, § 27. See the cases, Mordaunt *v.* Mordaunt, L. R. 2 P. 109, 382.

[4] Baker *v.* Baker, L. R. 5 P. D. 145, affirmed 6 P. D. 12; Mordaunt *v.* Moncrieffe, 2 H. L. 375.

[5] Worthy *v.* Worthy, 36 Ga. 45; Bradford *v.* Abend, 89 Ill. 78.

CHAPTER II.

WILLS.

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Handley v. *Stacey*, § 73.
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Use of medicines may produce incapacity, § 75.

V. Undue Influence and Fraud.

Fraud acting on weakness invalidates contracts and deeds, § 76.
Still more so wills, § 77.
Undue influence must amount to constraint, § 78.
Question is one of capacity to resist, § 79.
Mental weakness does not prove undue influence, § 80.

VI. Presumptions.

1. *From act and surroundings.*

Contents of will may indicate incapacity, § 81.
Inference from abuse of confidential relationship, § 82.
Inference from contents not conclusive, § 83.
Unjust will not necessarily invalid, § 84.
Disposing mind free to decide, § 85.
Eccentric clauses do not invalidate *per se*, § 86.

2. *From old age.*

Old age does not *per se* incapacitate, § 87.
Should rather be protected, § 88.
So of partial loss of faculties, § 89.
And bodily infirmities, § 90.
Mental weakness must be shown to incapacitate, § 91.
So in England, § 92.
Excessive failure of memory invalidates, § 93.
And senile dread of relatives, § 94.

3. *From physical defects.*

Competency exists in cases of deaf-mutes, but not knowledge of contents of instrument, § 95.
Question depends on education, § 96.
Deaf-mutes may marry when *compos mentis*, § 97.
Question one for jury, § 98.

I. CAPACITY.

§ 19. A DISPOSING mind, the existence of which is essential to testamentary capacity, is a mind intelligent enough to have a general idea of the property to be disposed of and of the objects among which the distribution ought to be made. When we come, however, to concrete cases, two important and often conflicting conditions are

Disposing mind is a mind capable of independent comprehension.

to be considered. On the one side the comfort of the weak, the dependent, and the aged, depends largely upon their testamentary capacity being maintained. If they cannot leave property to persons kind to them, they may be often left to suffer from want of kindness. On the other side, if a person of feeble intellect is so far exposed to the coercion or fraud of others as to validate testamentary provisions made by him under the pressure of such coercion or fraud, then not only may his life be made miserable, but he may become instrumental in perpetrating great wrongs. Hence it is that to constitute a disposing mind there must be, as will hereafter be more fully seen, capacity as well to resist undue influence as to take a general view of the estate to be bestowed and the objects among whom it is to be distributed.[1]

Idiots unable to make a will.

§ 20. An idiot, it is agreed on all sides, has no testamentary capacity;[2] though as to what constitutes idiocy there is as much doubt in testamentary as in contractual issues. "Idiocy," according to Dr. Ray, "is that condition of mind in which the reflective, and all or a part of the affective powers, are either entirely wanting, or are manifested to the slightest possible extent."[3] And to work testamentary incapacity, under any circumstances, the privation of reason must be complete. Yet even here the question varies with the facts of each case.

[1] Mr. Bigelow argues (1 Jarm. Wills, 5th Am. ed., note to *38), that the term "a disposing mind," is ambiguous and misleading. For, he says, it is "applied to issues of insanity in the sense of perverted (diseased) intellect, where the real question is, not whether the decedent had capacity to make a will, but whether he did (normally) will," whereas, "it is applicable properly only to issues of decay or of want of mind; the true question in such cases being whether the supposed testator had sufficient mental ability at the time to exercise will." See also Randolph & Talcott's note to Jarman, p. 100.

[2] Jarman on Wills, 5th Am. ed. *34, vol. i.; ed. by Randolph & Talcott, i. p. 63; 1 Redf. on Wills, §§ vii., viii.

[3] Medical Jurisprudence of Insanity, 1871, § 58; and the following remarks are worthy of attention: He tells us that "there is even more diversity in the characters of the idiotic and imbecile than in those of the sound; and this truth must not be forgotten if we would avoid the flagrant error of regulating judicial decisions by rules, which, though perfectly correct in regard to one case or set of cases, may be wholly incorrect in regard to others."

§ 21. Though we may fail to discover a definition of idiocy thoroughly comprehensive, we are justified in saying that where there is even a low degree of intelligence, idiocy cannot be said to exist. The test is comparatively simple. If the pretended idiot can be shown to have intelligently performed acts of business during the period in which idiocy be claimed to have existed, the allegation of incompetency on this ground falls, unless fraud or constraint be shown.[1]

If intelligence be shown, hypothesis of idiocy falls.

[1] Bannatyne *v.* Bannatyne, 2 Rob. 475; 16 Jur. 864; 14 Eng. L. & Eq. R. 581. In this case Dr. Lushington said: "Before entering upon this branch of the case, I must bear in mind what the nature of the case set up in opposition to the will is. I must repeat that it is not lunacy—it is not monomania—it is not any species of mental disorder, the symptoms of which it may, at periods, be difficult to detect; but the case presented is that of idiocy or imbecility, the characteristic of which is permanence, with little or no variation, though often, in case of idiots, it does sometimes happen that there will be a greater degree of excitement demonstrated than at other periods. How is such a case to be met? I apprehend, to meet it and to show that such a state of things did not exist at any given period, proof of acts of business are most important evidence. Many acts of business could possibly be done by a lunatic, and the lunacy not detected; but it is scarcely possible to predicate the same of an idiot or lunatic, or an imbecile person. I shall look, therefore, in the first instance, to the acts of business. It is proved by Mr. Falkner, that the deceased kept an account with Messrs. Tuckwell, at Bath, for four years, from 1818 to 1821, and during all that period, occasionally drew drafts, and all those drafts were paid to himself over the counter. According to the evidence, the deceased came himself to the counter, and there is no proof of any one accompanying him on such occasions; he asked for the sum he wanted; the clerk filled it in, he signed it, and took the money. Surely no idiot could have done this, for he must have exercised thought to go to the bank, memory and judgment as to the thing required; and moreover, his conduct and demeanor could not at such times have been as described by the witnesses against the will, or, from the glaring colors in which his imbecility is depicted, it must have been discovered, and the business never could have been transacted at all. . . . I consider these transactions, then, of first-rate importance towards solving all the difficulties of this case; for here, after the lapse of about thirty years, the court has the advantage of facts proved, with the dates duly affixed to them. There is, I must say, not the least evidence to show that in any one of these acts of business the deceased was assisted by any person whatever, the presumption is the other way; and to put these acts upon the very lowest basis on which they can be placed, they do utterly disprove idiocy or imbecility. I will simply repeat what I have already indeed said, that those who are afflicted with lunacy, sometimes have the management of and can manage their pecuniary affairs—an idiot, never."

§ 22. The cases considering the question, What constitutes unsoundness of mind in its legal sense? may be grouped in three classes. In the first we have those which proceed upon the notion that no man is incapable of making a will unless he is absolutely insane; in the second those which proceed upon the test of ordinary business sagacity and capacity; while in the third are to be considered such as require of each testator certain specified qualifications for making a will, the absence of any one of which incapacitates.

Different theories as to necessary qualifications.

§ 23. The most prominent case of the first class is the case of Stewart *v.* Lispenard,[1] already referred to. In this case the lowest test of capacity was applied. It was there held that a woman who had always lived under the care of her friends, had never attempted to transact business, who, at the age of forty, had not mastered the Lord's Prayer, and whose intellect and understanding were of a very low degree, was competent to execute a will. The court — the senate of the state of New York—reversing the chancellor, ruled that it is not the province of courts to measure the extent of the understanding of the testator, in passing on a will; if he be not totally deprived of reason, whether he be wise or unwise, he is the lawful disposer of his property. Followed for a time in several cases in New York,[2] this view has been adopted in Georgia;[3] in that state it is now settled that a disposing mind exists unless there is a total privation of reason.[4] But it is no longer the rule in New York.[5]

Theory that a low grade of intelligence is sufficient. *Stewart* v. *Lispenard.*

[1] 26 Wend. 255. See an excellent summary of this case, in 1 Beck's Med. Jur. 850.

[2] Blanchard *v.* Nestle, 3 Denio, 37; Clarke *v.* Sawyer, 2 Comst. 498; Burger *v.* Hill, 1 Bradf. 360.

[3] Potts *v.* House, 6 Ga. 324.

[4] Gardner *v.* Lamback, 47 Ga. 133. With the exception of an old Pennsylvania case (Dornick *v.* Reichenback, 10 S. & R. 84) these seem to be all the cases embodying this theory.

[5] Delafield *v.* Parish, 25 N. Y. 9. See, however, Crolius *v.* Stark, 7 Lans. 911, 64 Barb. 112, where it is said that there must be an entire loss of intellect to incapacitate, and that the testator must be unable to understand what he is doing or the contents of the paper when read to him. (Ingraham, P. J. 1873.) But subsequent cases follow Delafield *v.* Parish. An able review of this case appears as an editorial in the Am. Journ. of Insanity for Oct. 1862 (vol. 19). From this review we extract the following:—

"The alleged loss of understanding on the part of Mr. Parish was, as usual, dependent upon physical disease. He had threatening of cerebral disturb-

§ 24. The next class of cases occupy an intermediate position. They avoid any strict definition, holding that, from the nature of

ance for several years before his attack of apoplexy and paralysis in 1849, and had hereditary tendency to disorders of that nature. The shock of this final attack rendered him insensible and convulsed for several hours.

"It was soon discovered that his right side was paralyzed. His physician characterized the seizure as 'hemiplegia,' leading to 'defect of motion, not of sensation,' and implicating 'the right arm and the right leg, and also the organs of speech.' He subsequently acquired a slight control over the right leg, but the arm, which improved somewhat for the first six months immediately succeeding the attack, afterwards entirely lost its power. The left arm and leg were not permanently affected by paralysis.

"It is stated that Mr. Parish recovered, in a considerable degree, his strength after the first shock, and that during the remaining seven years of his life he enjoyed good, but not uninterrupted, health. He suffered from a severe and painful disease of the bowels in October, 1849; subsequently, he had a number of attacks, 'distinct from the general disease, but the most frequent dependent upon its cause, or, in other words, dependent upon the condition of the brain which led to the disease.'

" 'He had one or more severe attacks of cholera morbus, one or more of inflammation of the lungs, an abscess formed at one time under the jaw, which became so large as to threaten suffocation, and there were several minor attacks from time to time.'

"In addition to these disorders, ever after his apoplectic attack, Mr. Parish was subject, at regular intervals, to spasms or convulsions, the intervals extending from one or two weeks to six months, or even a year. Their approach was preceded by despondency and irritability on the part of the paralytic, and after the convulsion had passed off, he was generally better and brighter than he had seemed before. The convulsions are described as commonly coming on suddenly with a noise in the throat, resembling a shriek or scream, a violent reddening of the face, and a convulsion of the whole body—the muscles becoming alternately rigid and relaxed. Some of these paroxysms were so violent as seriously to threaten a fatal result. It was the opinion of Mr. Parish's attendant physician that these convulsions were 'connected with the condition of the brain left by the apoplectic attack.' The main feature of Mr. Parish's final illness was congestion of the lungs, but it was a complicated disease depending also, in the opinion of his physicians, upon the condition of the brain.

"His power of speech was mainly abrogated on his first attack, and from that time to his death he was never able to utter anything except a few imperfectly articulated monosyllables. These were principally 'yes' and 'no,' which he pronounced very imperfectly, and there is even great doubt whether he ever uttered them intelligibly.

"He expressed himself most frequently by the use of inarticulate sounds. These are described by the witnesses as sounds resembling the syllables, 'yah, yah, yah,' 'nyeh,' 'nin, nin,' 'yeah, yeah, yeah,' and others of a similar character.

"He accompanied these sounds by gestures and motions of the left hand and arm, and by nodding or shaking

Theories calling for business capacity.

the case, the law in this respect presents "no formula by which judges are bound."[1] The possession of ordinary business capacity,[2] the ability to contract,[3] or

his head. The gestures usually consisted in his waving his hand in different directions with his fingers extended, putting his fingers in his mouth, or raising his hand and shaking it. The external senses, feeling, hearing, and smelling, do not appear to have been seriously affected. His eyesight was always more or less imperfect.

"He would occasionally look at books and papers, but the preponderating evidence was that he could not read at all. An attempt was made to induce him to write with his left hand, but after several trials with paper, slate, and blackboard, which, in one or two instances, resulted in his writing after a copy the first few letters of his name in very doubtful characters, the attempt was abandoned.

"Block-letters were procured, but he would not use them, and pushed them away. A dictionary was suggested, but whether the trial was ever made or not, he never adopted that method of communicating his ideas. It was the constant practice of Mr. Parish's nurses, in accordance with his wife's directions, to read the newspaper to him, but the proponents failed to prove that he manifested comprehension of what was thus communicated, or exhibited any intelligent interest in the reading.

"Subsequent to the attack he was never intrusted with the management of his own affairs, nor allowed to have money in his possession. He could not supply his own wants, and was washed, dressed, and attended at table like a child, and was even frequently unable to control his evacuations.

"His wishes, as might be expected, were not easily ascertained. He expressed, by the inarticulate sounds and motions before referred to, that he desired something, and various suggestions would be made by those attending him until he expressed assent, though it often happened that it was utterly impossible to comprehend him, and the attempt would be abandoned by both parties. He would also assent to contradictory suggestions.

"Before his attack Mr. Parish is described by his relatives and acquaintances as a 'placid and unexcitable man,' of great self-respect and with great command of temper; 'his manners were mild, gentle, and unruffled;' a quiet, undemonstrative gentleman, rarely exhibiting any emotion, and deeply absorbed in his commercial transactions.

"After his attack he manifested a

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[1] Reade, J., in Lawrence *v.* Steel, 66 N. C. 584.

[2] So in Illinois, Lilly *v.* Waggoner, 27 Ill. 395; Trish *v.* Newell, 62 Ill. 196; Yoe *v.* McCord, 74 Ill. 33; Meeker *v.* Meeker, 75 Ill. 260; Rutherford *v.* Morris, 77 Ill. 397; Carpenter *v.* Calvert, 83 Ill. 62; Brown *v.* Riggin, 94 Ill. 560; Rambler *v.* Tryon, 7 S. & R. (Pa.) 90. Capacity is established by capability to transact business with sagacity and decision. Barnes *v.* Barnes, 66 Me. 286; Gleespin *in re*, 26 N. J. Eq. 523; Fraser *v.* Jennison, 42 Mich. 206; Black *v.* Ellis, 3 Hill (S. C.) 68; Tomkins *v.* Tomkins, 1 Bailey, 92.

[3] Coleman *v.* Robertson, 17 Ala. 84; Tobin *v.* Jenkins, 29 Ark. 151.

make a deed,[1] are the general tests which they propose, leaving the actual *status* of the decedent's mind to be arrived at by the jury by every-day standards and the light of ordinary reason.

marked change of disposition; he occasionally shed tears; and, in several instances, exhibited a want of appreciation of the requirements of decorum and even of decency. He had occasional unmeaning freaks and caprices, such as searching for his clothes in impossible places, going out to see the moon, and making excursions to the garret and the cellar, for no ascertained purpose; and it sometimes became necessary to use physical force to prevent him from undertakings which threatened his personal safety.

"He exhibited some recollection of his former daily and familiar places of resort, and of his former habits of business, which he would attempt, in trifling matters, to resume, as, by pulling out his watch when he passed the City Hall clock, or insisting, when driven out, upon being taken to the bank of which he was once a director, or to his old office, or to various tradesmen with whom he had been in the habit of dealing. In addition to these, the proponents, who contended that Mr. Parish's intellect was never materially impaired, brought forward many particular instances in which it was claimed that he manifested undiminished intelligence. One or two of these may be mentioned.

"It was said by one witness: 'Having been riding out of the city, he would take his watch out of his pocket, look at it, turn round and look at me, when I would ask him if he wished to return, if it was late or about his usual drive; he would say 'yes,' and nod his head.' Elsewhere, the same witness says: 'I recollect, on one occasion, the dining-room clock was run down; when he pointed at the clock, I perceived that it had stopped; remarked to him that it had stopped, and I would wind it up, when he nodded his head.' An old acquaintance testified that he recalled to Mr. Parish a ridiculous circumstance that had happened to them in company, many years before, and that Mr. Parish 'gave him to understand' that he recollected the circumstance, and laughed at it quite heartily. These instances, however, of which the above are specimens, were isolated, and taken together were not deemed of sufficient significance to avoid the conclusion derived from the facts before stated.

"In regard to the actual execution of the codicils, it seemed that the counsel employed to prepare them, read them to Mr. Parish in the presence of the subscribing witnesses, put to him the requisite formal questions, and received from him by sound and gesture, as usual, what were supposed to be affirmative replies. The counsel then assisted Mr. Parish by guiding his hand while he made his mark. At least this was the case at the execution of the first and second codicils; there was no evidence whether or not he received assistance in making his mark at the execution of the third.

"Such were the main points of the case presented to the court of appeals. The opinion of the court was delivered by Judge Davies, from which we quote the comments upon the facts which we have narrated, and the conclusions in

[1] Tyson *v.* Tyson, 37 Md. 567.

§ 25. But the preponderance of authority is to the effect that the law requires not so much any particular character of intellect,

which the majority of the Court concurred.

"After adverting to the change in Mr. Parish's disposition after his attack, Judge Davies says: 'How diametrically opposite to the previous conduct of his whole life is that now exhibited! And the inquiry forces itself upon the mind, what cause has produced such results? Can such totally inconsistent and opposite characters be reconciled with the theory that the faculties, the mind, and moral perceptions of Mr. Parish underwent no change, but were the same after July 19, 1849, as they were before that day? . . . . We confess ourselves totally unable to assent to any such theory. The conviction on our mind is clear that these facts and circumstances show unerringly that the attack of July 19th obliterated the mental powers, the moral perceptions, the refined and gentle susceptibilities, of Henry Parish; that after that period he ceased to be the mild, intelligent, and unruffled man he had been theretofore, and that thereafter he was not responsible for the unbecoming and ungentlemanly conduct he so frequently exhibited. He then ceased to be Henry Parish, and was no longer an accountable being.' Upon the point of Mr. Parish's method of communicating his ideas, Judge Davies says: 'With these imperfect media for ascertaining the thoughts of Mr. Parish, it is doing no injustice to any one to assume that they have been mistaken when they supposed that they correctly understood him. We more naturally and readily come to this result, because we find that all who had any intercourse with Mr. Parish, on many occasions, found great difficulty in understanding his wishes and thoughts, if they even understood them at all; and the instances are frequent and clearly established where he often made an affirmative and negative motion of his head, immediately succeeding each other, to the same question, leaving the inquirer in perplexity which he really intended.

. . . . . .

"'All the testimony shows that he could only indicate with his fingers and hand, or by sounds, that he wanted something, or that something was the matter, and which motions or sounds were construed by those around him as evidences of his wish to put a question, whereupon they began to suggest various topics, and when they thought they perceived that they had hit upon the subject in his mind they supposed he wished to inquire about, they put such questions as suggested themselves to them, and to which they supposed they had received affirmative or negative answers. If Mr. Parish had no power to express a wish to destroy a will, it follows he had none to create one, and the manifestation of his wishes depended *entirely upon the interpreter and the integrity of the interpretation*.

"'It is thus seen that great difficulty and uncertainty, to say the least of it, attended any expression of the thoughts or wishes of Mr. Parish, and that a large number of those having business or intercourse with him, utterly failed to attach or obtain any meaning to his signs, sounds, motions, or gestures. The natural and obvious deductions to be made from all these facts and circumstances are, that Mr. Parish had no ideas to communicate, or, if he had

as the ability to make certain efforts of mind and memory. These are stated variously; but the cases come to the same general result, namely, that the party

Theory that disposing memory is necessary.

any, that the means of doing so, with certainty and beyond all cavil and doubt, were denied to him.'

"After referring to the testator's failure to communicate by writing, or by the use of any artificial means, Judge Davies states the final conclusions, as follows:—

"'To what result does this review of the facts and circumstances in this case, adverted to and commented on, lead the mind? On a careful consideration of them all, with a most anxious desire to arrive at a just and correct conclusion, we are clearly of the opinion that the attack of Mr. Parish on the 19th of July, 1849, extinguished his intellectual powers, so obliterated and blotted out his mental faculties, that after that period he was not a man of sound mind and memory within the meaning and language of the statute, and was, therefore, incompetent to make a will. . . . .

"'It is not the duty of the court to strain after probate, and especially to seek to establish a posterior will, made in conceded enfeebled health, unsustained by previous declaration of intention, over a prior will, made in health, and with care and deliberation, when the provisions of the posterior will are in direct hostility to and conflict with those of the prior one.

. . . . . .

"'It would be in violation of long and well-established principles, and an almost uniform and unbroken current of decision in England and in this country, to admit to probate testamentary papers, prepared and executed under the circumstances these were, by a man who was in apparent full physical health, and possessing nearly his natural strength, who could not or would not write, who could not or would not speak, who could not or would not use the letters of the alphabet or even a dictionary, for the purpose of conveying his wishes, upon proof solely that they were supposed to express the testator's wishes, from signs, gestures, and motions made by him, and especially when it appeared that such signs, gestures, and motions were often contradictory, uncertain, frequently misunderstood, and often not comprehended at all.'

"Judge Davies states at length the three principles of law which he conceived to be applicable to the case.

"The first regards testamentary capacity, the second the burden of proof, the third the maxim, *qui se scripsit hæredem*. The chief interest and importance attaching to the decision, turn upon the discussion of the first of these — the doctrine of testamentary capacity.

"Up to the present time, the well-known case of Stewart *v.* Lispenard, decided in the court of errors in 1841 (26 Wend. 255), has been held to be of binding authority. The rule of testamentary capacity there adopted was extremely rigorous, and the proposition was sustained that in passing upon the validity of a will, courts do not measure the understanding of the testator, but, if he have any at all, and be not an absolute idiot, totally deprived of reason, he is the lawful disposer of his own property, and his will stands as a reason for his actions. This doctrine is repudiated, or at least modified, in the Parish Will decision,

must be able to remember what property he has, to consider who have claims upon it, and to know what disposition he is making of it. Delusions affecting any one of these subjects will destroy capacity.[1] And this, as has already been said, is the best test.

and the Lispenard case expressly overruled. In the language of the opinion, derived from various high authorities, the testator must have "sufficient capacity to comprehend perfectly the condition of his property, his relations to the persons who were, or should, or might have been the objects of his bounty, and the scope and bearing of the provisions of his will.

"'He must have sufficient *active memory* to collect in his mind, *without prompting*, the particulars or elements of the business to be transacted, and to *hold them in his mind* a sufficient length of time to perceive at least their obvious relations to each other, and to be able to form *some rational judgment* in relation to them.'

"This is receding from an extreme and perhaps a dangerous position, hitherto occupied by the court of last resort; and the establishment of a more rational doctrine. To hold, as a settled rule of law, that testamentary capacity exists where there is even 'a glimmering of reason,' is scarcely in accordance with an enlightened system of jurisprudence, or even with the dictates of ordinary common sense."

[1] Four cases may be considered leading on this subject: Converse *v.* Converse, 21 Vt. 168; Harrison *v.* Rowan, 3 Wash. C. C. 580; Delafield *v.* Parish, 25 N. Y. 9; and Banks *v.* Goodfellow, L. R. 5 Q. B. 549. In the first case, Judge Redfield said that it was necessary for the party to have something more than mere passive memory remaining. "He must undonbtedly," said the judge, "retain sufficient active memory to collect in his mind, without prompting, particulars or elements of the business to be transacted, and to hold them in his mind a sufficient length of time to perceive at least their more obvious relations to each other, and be able to form some rational judgment in relation to them. The elements of such a judgment should be the number of his children; their deserts, with reference to conduct and capacity, as well as need, and what he had done before for them, relatively to each other, and the amount and condition of his property, with some other things, perhaps." Mr. Justice Washington charged the jury in Harrison *v.* Rowan, a case approved by Lord Chief Justice Cockburn, in Banks *v.* Goodfellow, that "the testator ought to be capable of making his will with an understanding of the business in which he is engaged; a recollection of the property he means to dispose of; of the persons who are the objects of his bounty, and the manner in which it is to be distributed between them." The language of the court in Delafield *v.* Parish has been already given; and the opinion of Cockburn, C. J., in Banks *v.* Goodfellow is to the same effect. And these qualifications are the test whether unsoundness of mind arises from congenital defect or mental disease. See Banks *v.* Goodfellow, *ut supra*, at p. 570. The English cases following this case are, Smee *v.* Smee, L. R. 5 P. D. 84; 49 L. J. P. 8; Boughton *v.* Knight, 3 L. R. P. & D. 64. Greenwood *v.* Greenwood, 3 Curt. Append. 30; Harwood *v.* Baker, 3 Moore P. C. C. 282, are earlier cases. In this country may be cited to the same effect, Hathorn *v.* King, 8

Memory to this extent the party must have. Although mere weakness of mind does not generally incapacitate, yet a testator cannot dispose of property, the possession of which he but barely appreciates, among parties whose relations to himself he knows but does not understand; while, on the other hand, if he has this disposing capacity, nothing can prevent him from making a will as eccentric, as injudicious, or as unjust as caprice, frivolity, or revenge can dictate.

§ 26. In a late English case,[1] Sir James Hannen, in charging the jury, took especial care to guard against incapacity in relation to the natural objects of the testator's bounty.[2] The testator must have, he said, "a memory

English rulings that such qualifications in-

Mass. 371; Comstock *v.* Hadlyme, 8 Conn. 265; Van Guysling *v.* Van Kuren, 35 N. Y. 70; Horn *v.* Pullman, 72 N. Y. 269; Clarke *v.* Fisher, 1 Paige, 171; Brown *v.* Torrey, 24 Barb. 583; Kinne *v.* Johnson, 60 Barb. 69; Reynolds *v.* Root, 62 Barb. 250; Moore *v.* Moore, 2 Bradf. 261; Farman *v.* Smith, 7 Lans. 443; La Bau *v.* Vanderbilt, 3 Redf. 384; and see Redfield's Reports, *passim*, for cases following Delafield *v.* Parish; Boyd *v.* Eby, 8 Watts, 66; Daniel *v.* Daniel, 39 Penn. St. 191; Thompson *v.* Kyner, 65 Penn. St. 368; Tawney *v.* Long, 76 Penn. St. 106; Wood *v.* Wood, 4 Brewst. 75; Horbach *v.* Denniston, 3 Pittsb. 49; Den *v.* Johnson, 4 N. J. L. 454; Den *v.* Vancleve, 4 N. J. L. 589; Sloan *v.* Maxwell, 3 N. J. Eq. 563; Andress *v.* Weller, 3 N. J. Eq. 604; Lyons *v.* Van Riper, 26 N. J. Eq. 337; Errickson *v.* Fields, 30 N. J. Eq. 634; Cordrey *v.* Cordrey, 1 Houst. 269; Jamison *v.* Jamison, 3 Houst. 108; Higgins *v.* Carlton, 28 Md. 115; McElwee *v.* Ferguson, 43 Md. 479; Brown *v.* Ward, 53 Md. 376; Horne *v.* Horne, 9 Ired. 99; Stancell *v.* Kenan, 33 Ga. 56; Ragan *v.* Ragan, 33 Ga. Supp. 106; Taylor *v.* Kelley, 31 Ala. 59; Leeper *v.* Taylor, 47 Ala. 221; Kingsbury *v.* Whitaker, 32 La. Ann. 1055; Shropshire *v.* Reno, 5 J. J. Marsh. 91; Harper's Will, 4 Bibb, 244; Garrison *v.* Blanton, 48 Tex. 299; Wisener *v.* Maupin, 58 Tenn. 342; Beaubien *v.* Cicotte, 12 Mich. 459; Bundy *v.* McKnight, 48 Ind. 502; McClintock *v.* Curd, 32 Mo. 44; Harvey *v.* Sullens, 56 Mo. 372; Benoist *v.* Murrin, 58 Mo. 307; Young *v.* Ridenbaugh, 67 Mo. 574; Holden *v.* Meadows, 31 Wis. 284; Blakeley's Will, 48 Wis. 294; Hubbard *v.* Hubbard, 7 Oreg. 42. Many of these cases state the condition to be that "the testator must know what he was doing at the time." It is evident that this does not mean that the testator need only be conscious that he is making a will; it is to be traced to the language of Judge Washington in Harrison *v.* Rowan, *ut supra*, and in Stevens *v.* Vancleve, 4 Wash. C. C. R. 262. In both of these cases, after enumerating the necessary qualifications, the judge summed them up in the sentence, "Were the testator's mind and memory sufficiently sound to enable him to know and understand the business in which he was engaged at the time when he executed his will?" Some cases hold that it is necessary that the testator should know what he is about and to whom he is giving his property. See Horne *v.* Horne, 9 Ired. 99, and Missouri cases cited above.

[1] Boughton *v.* Knight, L. R. 3 P. & D. 64.

[2] See *infra*, Delusions, §§ 34 *et seq.*

volve a higher degree of capacity.

to recall the several persons who may be fitting objects of his bounty, and an understanding to comprehend their relationship to himself and their claim upon him." From this necessity he argues that it requires a peculiar degree of soundness of mind to make a will. Against this theory militate many American cases which consider that less mind is required to make a valid will than a valid contract;[1] but all these cases insist upon the possession by the testator of the specific qualifications already noticed. In Boughton *v.* Knight, Sir J. Hannen reviewed the various acts concerning a man's capacity to do which there might be a question, and came to this conclusion: "Whatever degree of mental soundness is required for any one of these things—responsibility for crime, capacity to marry, capacity to contract, capacity to give evidence as a witness—I must tell you . . . that the highest degree of all, if degrees there be, is required in order to constitute capacity to make a testamentary disposition . . . because it involves a larger and wider survey of facts and things than any one of those matters to which I have drawn your attention."[2] In a later case[3] he said, in explanation of this language, "I never said that it requires a greater degree of soundness of mind to make a will than to do any other act. . . . What I have said . . . is, that if you are at liberty to draw distinctions between various degrees of soundness of mind, then, whatever is the highest degree of soundness is required to make a will. That is very different. . . . From the character of the act, it requires the consideration of a larger variety of circumstances than is required in other acts, for it involves reflection upon the claims of the several persons who, by nature, or through other circumstances, may be supposed to have claims on the testator's bounty, and the power of considering these several claims, and of determining in what proportions the property shall be divided amongst the claimants."

Similar language to this was held by the court in an Illinois case,[4] where the rule as stated in Converse *v.* Converse[5] is objected

[1] Converse *v.* Converse, 21 Vt. 168; Comstock *v.* Hadlyne, 8 Conn. 261; Thompson *v.* Kyner, 65 Penn. St. 368; Harrison *v.* Rowen, 3 Wash. C. C. 586; Stevens *v.* Vancleve, 4 Wash. C. C. 262.

[2] Boughton *v.* Knight, *ut supra*, p. 72.

[3] Burdett *v.* Thompson, L. R. 3 P. & D. 72 *note*.

[4] Trish *v.* Newell, 62 Ill. 196.

[5] *Supra*, § 25.

to.[1] At the same time there is a general acquiescence in Judge Washington's conclusion that "it is not necessary that the testator should view his will with the eye of a lawyer, and comprehend its provisions in the legal form. It is sufficient if he has such mind and memory as will enable him to understand the elements of which it is composed —the disposition of his property in its simplest form."[2] A man who could make a will under certain circumstances might fail to grasp the subject under others.[3] Under any circumstances the question is one of degree,[4] and we may therefore accept the opinion of the Illinois supreme court, that the question in such cases is, "Were the testator's mind and memory sufficiently sound to enable him to know and understand the business in which he was engaged at the time he executed the will? the competency of the mind being judged by the nature of the act to be done, from a consideration of all the circumstances of the case."[5]

Party must have capacity to resist fraud or force.

§ 27. As is the case with contracts, issues in cases of the class now before us are largely dependent upon the question of undue influence by others. If no such undue influence is exercised, a degree of testamentary capacity will be regarded as adequate, when this degree of testamentary capacity would be regarded as inadequate were it unduly acted upon by the force or fraud of others. The question is, was the

[1] Trish *v.* Newell, *ut supra*, 204, per McAllister, J.

[2] Judge Washington in Harrison *v.* Rowan, *ubi supra*.

[3] As is said by Judge Washington in Harrison *v.* Rowan, "most men at different periods of their lives have meditated upon the subject of the disposition of their property by will; and when called upon to have their intentions committed to writing, they find much less difficulty in declaring their intentions than they would in comprehending business in some measure new." But this can only be so when the conditions of the disposition remain practically the same as when the perfectly sane mind of the testator dwelt upon them.

[4] Lord Cranworth in Boyse *v.* Rossborough, 6 H. L. C. at p. 45.

[5] Trish *v.* Newell, 62 Ill. 205. And see Carpenter *v.* Calvert, 83 Ill. 62; Garrison *v.* Blanton, 48 Tex. 299. See Lawrence *v.* Steel, 66 N. C. 584.

Theobald (Wills, 1881, p. 14) states the rule to be, that "a testator must, at the time of making his will, have an understanding of the nature of the business in which he is employed, a recollection of the property he means to dispose of, of the persons who have a claim to be the objects of his bounty, and the manner in which it is to be distributed."

document in question the testator's will? If he had a disposing mind, no matter how feeble, and this disposing mind was allowed freedom in its play, then the will is to be sustained. But if he was defrauded or coerced by those about him, then the will is to be set aside, no matter how high may have been the standard of his capacity.[1] Two important qualifications, however, are to be here kept in mind: *First*, the lower the degree of intellect, the less the amount of proof of fraud or of coercion required to set aside a will; an amount of fraud or of coercion which a strong mind would at once repel, may be yielded to by a weak mind.[2] *Secondly*, it is not necessary that absolute freedom from influence should be shown. There is no testator absolutely free from influence.[3] The test is, was there such influence applied as to take away his freedom of disposition? If so, if his will was overcome by force, either physical or moral, or perverted by fraud, then a testamentary disposition so made cannot stand.[4]

Mere mental weakness does not incapacitate.

§ 28. Weakness of mind and forgetfulness, therefore, are not sufficient to invalidate a will if it appear that the testator's mind was capable of attention and exertion when roused, and was not imposed upon.[5] It has been truly said that "the weak have the same rights with the prudent or strong-minded to dispose of their property."[6] In general, so that capacity exists, courts will not undertake to measure the degree of that capacity, and they will protect those deficient in strong natural ability in the exercise of the powers they possess.[7]

[1] See *infra*, §§ 77 *et seq.* Kinleside *v.* Harrison, 2 Phill. 449; Gaither *v.* Gaither, 20 Ga. 709; Collins *v.* Townley, 21 N. J. Eq. 353. See also cases cited in the next section.

[2] *Infra*, §§ 77 *et seq.*, 82 *et seq.*, 87 *et seq.*; Reynolds *v.* Root, 62 Barb. 250.

[3] *Infra*, §§ 80 *et seq.*

[4] See generally *infra*, as above; 1 Jarman on Wills, Bigelow's ed., *35; Randolph and Talcott's ed., note E to chap. iii.; 1 Redf. Wills, *508, and succeeding pages.

[5] Tuffnell *v.* Constable, 3 Knapp P. C. C. 122.

[6] Strong, J., in Newhouse *v.* Godwin, 17 Barb. 236.

[7] Osmond *v.* Fitzroy, 3 P. Wms. 129; Andress *v.* Weller, 3 N. J. Eq. 604; Jamison *v.* Jamison, 3 Houst. (Del.) 108; Duffield *v.* Robeson, 2 Harr. 375; Elliott's Will, 2 J. J. Marsh. 340; Tomkins *v.* Tomkins, 1 Bailey, 92. See *infra*, § 87. In Hopple's Est., 7 W. N. C. (Penn.) 523, Judge Ashman (O. C.) said that "want of memory, vacillation of purpose, credulity, vagueness of thought may coexist with testamentary capacity." This seems to be somewhat broad in view of the fact

§ 29. If eccentricities are to incapacitate a man from making a will, few valid wills could be made, and often men of the strongest character would be incapable of will making. Sometimes the attendant of old age, sometimes the concomitant of genius, often the consequence of hard treatment by others, eccentricity cannot be regarded as working testamentary incapacity without depriving of this capacity some of the most meritorious as well as most intelligent of mankind. It is otherwise, however, as will presently be seen more fully, when eccentricity takes the phase of monomania as to one of the objects of testamentary disposition.[1]

Nor does eccentricity.

§ 30. So far as concerns collateral contentions, the burden of proof is on those assailing the validity of a will. All persons not under judicial decree of insanity are presumed to be sane until the contrary is proved.[2] And this is in some jurisdictions held to be the case in an issue of *devisavit vel non*.[3] But the rule is taken to be otherwise in some of our states and also in England, those propounding a will being required to prove the capacity of the testator.[4]

Conflict as to the burden of proof.

that the supreme court of that state has adopted the ruling of Converse *v.* Converse and Harrison *v.* Rowan; but it serves to illustrate the unwillingness of judges to refuse capacity to those whose mental powers have become dulled.

[1] Eccentricity differs from monomania in this, that it is a conscious aberration, and consists of peculiarities which are indulged in in defiance of popular sentiment; whereas monomania is unconscious. 1 Redf. on Wills, *72. The cases exhibit many interesting phases of eccentricity. Hamilton *v.* Hamilton, 10 R. I. 538; Reynolds *v.* Root, 62 Barb. 250; Brick *v.* Brick, 66 N. Y. 144; La Bau *v.* Vanderbilt, 3 Redf. 384; Trumbull *v.* Gibbons, 22 N. J. L. 117; Errickson *v.* Fields, 30 N. J. Eq. 634; Lewis's Case, 33 N. J. Eq. 219; Kise *v.* Heath, 33 N. J. Eq. 239; Merrill *v.* Rush, 33 N. J. Eq. 537; Higgins *v.* Carlton, 28 Md. 115; Brown *v.* Ward, 53 Md. 376; Gardner *v.* Lamback, 47 Ga. 133; Kingsbury *v.* Whitaker, 32 La. Ann. 1055; Carpenter *v.* Calvert, 83 Ill. 62; Blakeley's Will, 48 Wis. 294; Smith's Will, 8 N. W. Rep. 602. See, also, Frere *v.* Peacock, 1 Rob. 442; Morgan *v.* Boys, cited 1 Redf. on Wills, *82, from Taylor; Austen *v.* Graham, 8 Moore P. C. C. 493. For a case where a will was sustained though the eccentricities of the testator were most extravagant, see Lee *v.* Lee, 4 McCord, 183.

[2] Whart. on Ev. § 1252; Theobald on Wills, 14.

[3] Swinburne, 44, pt. 2, § 3.

[4] As to the English rule, see Smee *v.* Smee, etc., L. R. 5 P. D. 84; Boughton *v.* Knight, L. R. 3 P. & D. 64. A review of the cases in this country will be found in Randolph and Talcott's edition of Jarman on Wills (5th Am.

Non-experts, as well as experts, may give opinions.

§ 31. As will hereafter be seen more fully, a non-expert (*e. g.* a lay attendant or nurse, or friend, or business adviser) may be called upon to give his opinion as to the testator's sanity in all cases in which the symptoms are not occult, but are distinguishable by non-specialists. *A fortiori*, may experts in the treatment of the insane, give opinions as to the sanity of particular persons, such opinions being based on personal observations.[1]

Experts may be asked as to hypothetical case.

§ 32. Experts, also, in these, as well as in all other issues in which sanity is involved, may be examined on hypothetical cases. They cannot, however, be asked their opinions as to the evidence in any case involving contested questions of fact.[2]

Speculative opinions of experts entitled to little weight.

§ 33. As is shown in detail in another work,[3] and as we shall have hereafter occasion to see more fully when we proceed to discuss the authority of experts in their general relations,[4] the speculative opinions of experts employed and feed in particular cases are not entitled to great weight. This is peculiarly the case in testamentary questions involving strong family feeling and large pecuniary interests. In such cases each party is led to seek, among the large number of specialists in mental diseases, specialists who would, from their preconceived view, be likely to sustain his case; and as there is no theory of insanity that has not an expert exponent, no case of sup-

ed.), note D to chap. iii., vol. i. p. 104. The following cases may be added to those in the note referred to: Davis *v.* Davis, 123 Mass. 590; Howard *v.* Moot, 64 N. Y. 447; Egbert *v.* Egbert, 78 Penn. St. 326; Grubbs *v.* McDonald, 91 Penn. St. 236; Taylor *v.* Creswell, 45 Md. 522; Brown *v.* Ward. 53 Md. 376; Rush *v.* Megee, 36 Ind. 69, decide that sanity in such cases is to be presumed. *Contra*, that the burden is on the propounders, Robinson *v.* Adams, 62 Me. 369; Riddell *v.* Johnson, 26 Gratt. 152; Evans *v.* Arnold, 52 Ga. 169; Wetter *v.* Habersham, 60 Ga. 193; Benoist *v.* Murrin, 58 Mo. 307; Tate *v.* Tate, 89 Ill. 42; Martin *v.* Perkins, 56 Miss. 204. But one under guardianship is presumptively incapable of making a will. Breed *v.* Pratt, 18 Pick. 115; Hamilton *v.* Hamilton, 10 R. I. 538. And the burden of proof is shifted where there has been an inquisition or general derangement has been shown. Halley *v.* Webster, 21 Me. 461; Clark *v.* Fisher, 1 Paige, 171; Jackson *v.* King, 4 Cowen, 207; Morrison *v.* Smith, 3 Bradf. 209; Harden *v.* Hays, 9 Penn. St. 151; Higgins *v.* Carlton, 28 Md. 115; Smith *v.* Smith, 4 Baxt. 293; Rush *v.* Megee, 36 Ind. 69.

[1] *Infra*, § 257.

[2] *Infra*, § 261.

[3] Wh. on Ev. §§ 434 *et seq.*

[4] *Infra*, § 275.

posed insanity can be brought into court which some expert cannot be found to support by his testimony under oath. We must also take into consideration the bias arising from the relation of the professional expert to his employer. The opinions of feed counsel as to law would not be regarded as binding the court, no matter how high-toned such counsel may be; for the same reason the opinions of even the most high-toned of experts, when employed and feed by particular parties to litigated issues, should not be regarded as binding the jury.[1]

[1] See *infra*, §§ 293 *et seq.*

Mr. Shelford's views on this point are worthy of grave consideration. "One person," he says, "seeing a testator in extreme age, or under extreme sickness, thinks that if he knows those about him, and can answer an ordinary question with respect to the state of his illness, or his wants, such and similar matters render him capable of giving effect to a disposition by will, however complicated it may be, by the mere formal execution of the instrument; while another person may be of opinion that, though a testator, in the ordinary management of his affairs, can hold reasonable conversation, can fully comprehend all the usual and simple transactions of life, yet, if he is unable to take the active management of all his concerns, however involved those concerns may be, or if he is liable to become confused by entering into intricate transactions, he is totally incapable, and cannot enter into a testamentary disposition, however plain and simple it may be. Now, when opinions are formed by such opposite standards, it is obvious much contrariety will occur. Sir John Nicholl observed that experience in the ecclesiastical court teaches us that evidence upon questions of capacity is almost always contradictory, such evidence being commonly that of opinion merely; and this contrariety proceeds from the obvious grounds that, of the witnesses, no two, possibly, have seen the party whose estate is deposed to, at precisely the same circumstances; and that each, again, of the several witnesses, no matter how numerous, measures, possibly, testamentary capacity by his own particular standard. These sources of discrepancy, and many more might be enumerated, are common to all cases of this description. There is an additional source, when the transaction of which they have to speak is remote, a circumstance sufficient in itself to account for no inconsiderable degree of contrariety of evidence, even where the witnesses have to speak of facts merely, and not of opinions formed and inferences built upon facts, of which most of the evidence furnished upon questions of capacity is commonly made up. If the court, therefore, on questions of capacity, is accustomed to rely but little upon such evidence, so far as it is that of mere opinion, but to form its own judgment from the facts and the conduct of the parties at the time, it becomes it to do so, more peculiarly when much of the evidence not merely consists of opinions delivered long subsequently to the transactions which they profess to have suggested them, upon loose recollections, too, and after repeated discussions of the sub-

II. DELUSIONS.

Delusions to be proved by insanity, not *vice versa*.

§ 34. Delusions, as viewed psychologically, will be considered at large in a subsequent chapter.[1] In their legal relations, so far as concerns testamentary capacity, they were the subject of patient investigation by Sir J. P. Wilde (Lord Penzance), in the court of probate and divorce, in 1867.[2] A delusion is "a belief of facts which no rational person would have believed;" so spoke Sir J. Nicholls; "but who," asks Sir J. P. Wilde, "is a 'rational' person? and does not the assumption 'rational' beg the question at issue?" "The belief of things as realities which exist only in the imagination of the patient;" so said Lord Brougham in Waring *v.* Waring; but do not sane people imagine unrealities? "A pertinacious adherence to some delusive idea, in opposition to plain evidence of its falsity," said Dr. Willis, as quoted by Sir J. Nicholls; "but are not sane people sometimes pertinacious in error? and who is to determine what evidence is 'plain?'" Hence it is that Sir J. P. Wilde, arguing from the inadequacy of these definitions, concludes that "delusions," as *insane* delusions, are to be proved by insanity, not insanity by delusions.[3]

ject matter with interested parties." Shelford on Lunacy, 277–8. See Vanauken *ex parte*, 2 Stockt. (N. J.) 186. Judge Redfield, in commenting upon this subject, says that the testimony should come "(1) From persons of general capacity, skill, and experience in regard to the whole subject, in all its bearings and relations; and (2) as far as practicable, from those persons who have had extensive opportunity to observe the conduct, habits, and mental peculiarities of the person whose capacity is brought in question, extending over a considerable length of time, and reaching back to a period anterior to the date of the malady." Wills, 4th ed. *136, 137. In Illinois it is said that where capacity is established *aliunde*, medical speculations are of little weight. Carpenter *v.* Calvert, 83 Ill. 62. It is ruled in Indiana that it is wrong to direct the jury as to the weight to be given to the testimony of experts; their credibility is to be tested by the rules applying to other classes of witnesses. Eggers *v.* Eggers, 57 Ind. 461; Cuneo *v.* Bessoni, 63 Ind. 524.

[1] *Infra*, §§ 723–743. As to delusions as a criminal defence, see *infra*, § 125.

[2] Smith *v.* Tebbitt, L. R. 1 P. & D. 398.

[3] Here may be noticed the language of Sir J. Hannen in two recent cases before the probate court. In Boughton *v.* Knight (1873, L. R. 3 P. & D. 64; see *supra*, § 26) he told the jury that in one sense Sir J. Nicholls' phrase was "arguing in a circle, for, in fact, it is only saying that a man is not rational who believes what no rational man

§ 35. In most of our American states, proof of insane delusions is insufficient to defeat a will, unless the will be the direct offspring of such insane delusions. Where the delusion thus operates, then the will is void.[1] "It appears to me," says Mr. Justice Sergeant, in delivering an opinion of the supreme court of Pennsylvania in 1839,[2] "that the only question in such a case is, whether the person was of sound memory

Will void when the result of insane delusion.

would believe; but for practical purposes it is a sufficient definition of a delusion, for this reason — that you must remember that the tribunal that is to determine the question (whether judge or jury) must, of necessity, take his own mind as the standard whereby to measure the degree of intellect possessed by another man. You must not arbitrarily take your own mind as the measure . . . but you must of necessity put to yourself this question, and answer it: Can I understand how any man in possession of his senses could have believed such and such a thing? and if the answer you give is, I cannot understand it, then it is of the necessity of the case that you should say the man is not sane." Subsequently, in charging the jury in the case of Smee *v.* Smee (1879) L. R. 5 P. D. 84, he said (p. 90), that delusions are "ideas which you cannot conceive any rational man to entertain." In reviewing the case of Boughton *v.* Knight, the editors of the Journal of Mental Science say, "Sir James Hannen . . . says, 'the test applied will solve most, if not all, the difficulties which arise in investigations of this kind.' The discovery is so simple and satisfactory that one is surprised the world should not have hit upon it sooner. The test whereby to determine what is an insane delusion is not whether it is of a kind which has been observed in thousands of insane persons, has a character of insanity about it, and is associated with mental and physical symptoms which mark a definite form of disease running through a definite course, but it is whether each of twelve men, who have been gathered together in a box from behind their counters, can understand how any man in possession of his senses could have believed it." Jour. Ment. Sc., vol. xix. p. 241.

[1] Robinson *v.* Adams, 62 Me. 369; Coit *v.* Patchen, 77 N. Y. 533; Bonard's Will, 16 Abb. Pr. N. S. 128; Thompson *v.* Quimby, 2 Bradf. 449; S. C. *sub nomine* Thompson *v.* Thompson, 21 Barb. 107; La Bau *v.* Vanderbilt, 3 Redf. (N. Y.) 384; Lathrop *v.* Board of Foreign Missions, 67 Barb. 590; Tawney *v.* Long, 76 Penn. St. 106; Lee *v.* Scudder, 31 N. J. Eq. 633; Brown *v.* Ward, 53 Md. 376; Gardner *v.* Lamback, 47 Ga. 133; Evans *v.* Arnold, 52 Ga. 169; Cotton *v.* Ulmer, 45 Ala. 378; Johnson *v.* Moore, 1 Litt. (Ky.) 371; James *v.* Langdon, 7 B. Mon. 193; Gass *v.* Gass, 3 Humph. 278; Benoist *v.* Murrin, 58 Mo. 307; Cole's Will, 49 Wis. 179; and cases *infra*. See an essay by Dr. Ray on the "Angel Will Case," 20 Am. Journ. of Insanity, 145; and see also Flanagan *v.* Fenlayson, 18 *ibid.* 249. See, also, *infra*, §§ 723-743. In Indiana, by statute, a person "who has become the victim of a mental derangement in any form" is incompetent to make a will. Eggers *v.* Eggers, 57 Ind. 461.

[2] Boyd *v.* Eby, 8 Watts, 66.

and discretion, considering the act done in all its bearings, and judging of the soundness of the mind of the supposed testator by his conduct and declarations at the time, and as connected with his previous insanity, and the degree of restoration of mind in the interval; and that if the erroneous and groundless impressions received during the time of his delirium shall retain their hold (whether by some physical derangement of the brain, or by some indelible stamp on the thinking faculties), that person must be considered still under a delusion—the effect continues, and it is only by effects we can judge of the existence of the exciting cause—and if he is under a delusion, though there be but a partial insanity, *yet if it be in relation to the act in question, it is well settled it will invalidate contracts generally, and defeat a will which is the direct offspring of this partial insanity.*"[1]

The converse of this result, depending, however, on the same principle, is illustrated by a case decided by Judge King, in Philadelphia, in 1851. "A monomaniacal delusion," he said, "inveterately entertained by a testator against one who would otherwise have been the natural object of his bounty, and shown to be the reason which has excluded him from it, and to have had no other existence except the distempered imagination of the testator, would invalidate a will made under such influence. And for the very plain reason that a will made under the suggestion of such an insane delusion is not, what the law requires a will to be, the product of a mind capable of reasoning rightly. For although the law recognizes the difference between general and partial insanity, yet if the will has been made under the influence of such partial insanity, and as the product of it, it is as invalid as if made under the effects of an insanity never so general. Eccentricities of conduct, absurd opinions, or belief in things appearing to us extravagant, although they may be and are evidences of testamentary incapacity, do not constitute it necessarily and in themselves. A man may believe in witches and witchcraft, as it seems this testator did, or, like him, he may have believed his health to have been permanently affected by slow poisons surreptitiously administered to him, and yet be competent to make a will, where such will is not shown to have some connection with such absurd opinions or extravagant belief, and where

[1] See also Crum *v.* Thornly, 47 Ill. 192.

the mind is shown to be in other respects sound and vigorous, and the judgment intelligent and clear. This testator was upwards of eighty-three years old when he died, and consequently received his early impressions when the belief in witches and witchcraft still lingered among persons of a much higher social position and of much better education than himself. Colonial America either inherited from the mother country, or received from the emigration of continental Europe, this absurd notion. Pennsylvania did not so far escape the general contagion as to make it very surprising that a man in the condition of life occupied by the testator, born before the American Revolution, should have participated in it."[1]

§ 36. A belief in witchcraft, it has been ruled in Indiana and Mississippi, does not divest testamentary capacity,[2] and a will on its face rational has been sustained, although the testator believed in mesmerism, clairvoyance, magic, and occasional diabolic visitation.[3] So, in Connecticut, in 1850, after a very careful review of the authorities, including Waring *v.* Waring, it was ruled "that the notion that a single delusion is general insanity, and that the jury are to be so instructed, irrespective of the degree or intensity of it, is nowhere countenanced in this country, and not until lately in England." In this case the court below had refused to instruct the jury "that, if the testatrix harbored a delusion, she was while harboring such delusion of unsound mind, and her will made at such a time would be void." Judge Ellsworth, who delivered the opinion of the supreme court, held that the judge was right in refusing to instruct the jury as requested. He discusses this question at great length, and his conclusion is: "That if the testatrix had mind enough to know and appreciate her relations to the natural objects of her bounty, and the character and effect of the dispositions of her will, then she had a sound and disposing mind and memory, although her mind may not be entirely unimpaired."[4]

But single delusion not general insanity.

§ 37. So, on an appeal in the New Hampshire supreme court from the probate court, where the issue was whether a certain

[1] Leech *v.* Leech, 4 Am. L. J. N. S. 179.

[2] Addington *v.* Wilson, 5 Ind. 137; Kelly *v.* Miller, 39 Miss. 19. See Lee *v.* Lee, 4 McCord, 183.

[3] Thompson *v.* Thompson, 21 Barbour, 107; S. C. *nom.* Thompson *v.* Quimby, 2 Bradf. 449.

[4] Dunham's Appeal, 27 Conn. 192.

Nor does "moral insanity" incapacitate.

testator was of sane mind at the time of executing her will, and it appeared that the judge in the court below held that "mere moral insanity, disorder of the moral affections and propensities, will not, unless accompanied by insane delusions, be sufficient to invalidate a will or to incapacitate a person to make one;" also "if the will and its provisions were not in any way the offspring or the result of the delusion, and were not connected with or influenced by it, then she was of sane mind to make the will;" and exceptions were taken to these instructions; Sargent, J., in the supreme court, said, "The instructions were correct as being in accordance with the great weight of authority, ancient and modern, English and American, medical and legal."[1]

Eccentricities are not delusions.

§ 38. In a trial before Judge Grier, in the circuit court of the United States, in Philadelphia, in 1855,[2] it was in evidence, "that the testator was of strong mind, but very eccentric, obstinate, and opinionated; but no witness," to follow Judge Grier's charge to the jury, "has shown facts from which a sound and disposing mind and memory could be inferred. His mind was greatly excited on a particular subject—his park property—he was very stingy, and set a high value on his rights of property. But it is no evidence of any mental delusion that he thought this seizure of his property without his consent a high-handed exercise of power, etc. That it became his hobby, made him very troublesome, and a bore to all his acquaintances and friends, is of no importance at all, in the matter trying before you, if he retained his memory and his usual shrewdness in the management of all his other concerns. Many a man has some hobby, and may ride it very much to the annoyance of others, and yet be perfectly capable of managing his own affairs and disposing of his property by deed or will. He may believe in spiritualism, the Book of Mormon, Fourierism, or any other of the absurdities of the day, which infest the trains of fanatics. He may talk very much like a fool, as you or I may think, on these subjects, and unduly magnify their importance. He may profess an absurd fondness for music, and play the Pandean pipes, behave like a fool occasionally; may tell his dreams and call them visions, and may believe in them;

[1] Boardman *v.* Woodman, 47 N. H. 120.

[2] Turner *v.* Hand, 3 Wall. Jr. 88 at p. 120.

he may be addicted to telling lies about his will; yet, gentlemen, we could not on these accounts pronounce him unfit to manage his affairs or dispose of his property in his lifetime; and could not avoid his deeds, nor condemn him to a lunatic hospital as a fit tenant for such an institution."

§ 39. On the other hand, a delusion by a testator that his nephews, being his heirs-at-law, were conspiring to take his life, and that one of them had caused his death by putting him in a stove, coupled with other collateral delusions, invalidates a will which was its product.[1] In his opinion in the court of errors, Denio, C. J., said: "On questions of testamentary capacity, courts should be careful not to confound perverse opinions and unreasonable prejudices with mental alienation. These qualities may exist in any mind, even to a high degree, and yet, so far as the view which the law takes of the case, the subject may be sane and competent to perform a legal act, and to be held responsible for a crime. Setting aside cases of dementia, or loss of mind and intellect, the true test of insanity is *mental delusion*." A person may be insane on some subjects, though on others he may reason, act, and speak like a sensible man.[2]

§ 40. So, where a testator, during an attack of insanity, conceived a violent and groundless prejudice against his oldest son, which prejudice he retained after his apparent convalescence, a will, disinheriting his son, which he executed at the latter period, was ruled by the supreme court of Georgia to be invalid.[3] But, unless the prejudice be proved to be *insane*, in other words, in cases where it is the conclusion of a reasoning mind, on any evidence, no matter how slight, its indulgence will not overturn a will. Thus no such disabling effect was assigned to a notion by the testator, on slight but insufficient evidence, that a daughter was illegitimate, this notion causing her disinheritance,[4] nor will

Unless the result of insanity.

[1] Am. Seaman's Friend Soc. *v.* Hopper, 43 Barb. 625.

[2] Seamen's Friend Soc. *v.* Hopper, 33 N. Y. 619.

[3] Lucas *v.* Parsons, 24 Ga. 640; see White *v.* Wilson, 13 Ves. Jr. 87; Jenckes *v.* Smithfield, 2 R. I. 255; Stanton *v.* Wetherwax, 16 Barb. 259; Coit *v.* Patchen, 77 N. Y. 533; Stackhouse *v.* Horton, 15 N. J. Eq. 202; Evans *v.* Arnold, 52 Ga. 169; Florey *v.* Florey, 24 Ala. 241; Cotton *v.* Ulmer, 45 Ala. 378; Cole's Will, 49 Wis. 179.

[4] Clapp *v.* Fullerton, 34 N. Y. 190; see Cole's Will, 49 Wis. 179.

capacity be considered as destroyed by any delusion not actually insane.[1]

Rule in England formerly that delusions must affect *factum* of will to incapacitate.

§ 41. The English rule was for a long time considered settled on the same basis, and was set forth with great fulness by the prerogative court, during Sir J. Nicholls' presidency.[2] The question there was as to the testamentary capacity of a gentleman named Stott, an eminent electrician, who had an only child, against whom he had, without cause, imbibed an uncontrollable disgust and aversion, which manifested itself in acts of great cruelty and oppression, and ultimately in a will by which she was cut off in favor of collateral relations. Sir J. Nicholls pronounced against the will, in an opinion distinguished for its elaborate fulness as well as for its judicial strength. "It has been said repeatedly by the counsel for the residuary legatees," so he argues at the outset, "that this 'partial insanity' is a something unknown to the law of England. Now, if it be meant by this, that the law of England never deems a person both sane and insane at one and the same time, upon one and the same subject, the assertion is a mere truism (as well, indeed, in reason as in law), and as such is incapable of being effectively opposed. At the same time, as no such sort of partial insanity is set up by the daughter, the case of partial insanity which she has *really* undertaken to sustain is at no risk from the truth of that position, so understood, being conceded. But if, by that position, it be meant, and intended, that the law of England never deems a party both sane and insane at *different* times, upon the *same* subject; and both sane and insane at the same time upon *different* subjects—(the most usual sense, this last, of the phrase '*partial insanity*,' and the one in which I take it to have been used throughout, by the counsel for the next of kin), there can scarcely be a position more destitute of legal foundation; or rather, there can scarcely be one more adverse to the streams and current of legal authority." The learned judge sustains himself by the authority of Locke, who says: "A man who is very sober, and of a right understanding in all other things, may in *one* particular be as frantic as any man in Bedlam;" and of Lord Hale, who expressly declares "there is a partial in-

[1] Hall *v.* Hall, 38 Ala. 131; Hall *v.* Dexter *v.* Hall, 15 Wall. 9.

[2] Dew *v.* Clark, 3 Add. 79; see 1 Ibid. 279; 2 Ibid. 102. Unger, 2 Abbott (U. S.) 507; affirmed,

sanity of mind, and a total insanity. The former is either in respect to things [*quoad hoc*, *vel quoad illud insanire*—some persons that have a competent use of reason in respect to some subjects, are yet under a particular *dementia* in respect of some particular discourses, subjects, or applications], or else it is partial in respect of degrees; and this is the condition with very many, especially melancholy persons, who, for the most part, discover their defect in excessive fears and grief," and yet are not wholly destitute of the use of reason. He concludes as follows: "The deceased's state of mind at the time of making his will is intimately, I think, connected with his state of mind on the subject matter of his will—understanding by this the disposal, by will, of his property. If the deceased were at *all* times of unsound mind on the subject matter of his will, he *must* have been of unsound mind at *the* time of making his will. To suppose the contrary would be to suppose the deceased both sane and insane at the *same* time and on the *same* subject; a supposition, I apprehend, equally absurd in a legal and moral point of view. And, subject to these considerations, the question in the end to be determined—the point at final issue—is not whether the deceased's insanity in certain *other* particulars, as proved by the daughter, should have the effect of defeating *a* will, *generally*, of the deceased, or even this *identical* will, but it is whether his insanity, on the subject of his daughter, *as* also proved by the daughter, should have the effect of defeating, not so much any will (*a* will *generally*) of the *deceased*, as this identical will; and to the decision of that question I am to be understood as solely addressing myself in the following observations:—

"Now, the daughter being in this case the sole next of kin, the deceased's only child, it is quite impossible, I think, to disconnect the daughter from the subject matter of his will—that is, of his property; they are subjects, in effect, identified. Hence, the deceased's insanity on the subject of his daughter, *generally speaking*, being proved at *all* times in my judgment, it follows that his insanity, at the time of making his will, is also proved, in my judgment, unless the contrary is to be inferred from the will itself. But the inference furnished by the will itself (and it is for this only that I refer to the dispositive part—to the contents of the will at all) is quite the other way. For the prominent feature of the deceased's insanity, in respect to the daughter, was aversion or an-

tipathy to the daughter, so pleaded and so proved; and the will is a will plainly inofficious, so far as regards the daughter, being a will by which she is, in effect, disinherited—disinherited, too, in favor of parties nearly utter strangers to the deceased (for so it appears), though not remotely connected with him by blood, being his sister's children. Therefore it follows that, in my judgment, the deceased is proved, upon the whole matter, to have been insane at the time of his making this will: which was the daughter's case. . . . Had the contents of the will furnished a contrary inference —had the will, so far as respects the daughter, been in all parts of it an officious will, the conclusion on this head, and so upon the whole case, *might* have been different; the very contents of the will would in that case have inferred that, however partially insane (insane on the subject of his daughter) the deceased might have been, generally speaking, still, that such partial insanity was not in actual operation at the time of his making the will, in which respect the will *might* have been valid."[1]

This view only partially approved by Lord Lyndhurst.

§ 42. It is true, that, when in the same case a bill of review was applied for to Lord Chancellor Lyndhurst, he limited with evident caution his approval of the judgment of Sir J. Nicholls in such a way as to reserve the question of partial insanity, as above stated. "I have read his judgment," he says,[2] "with great attention; and I collect from it that his meaning is this: that there must be unsoundness of mind to invalidate a will, but that the unsoundness may be evidenced in reference to one or more subjects. All that the learned judge meant to convey was, that it was no objection to the imputation of unsoundness, that it manifested itself only or principally with reference to one particular question, or one particular person."

[1] A man moved by capricious, frivolous, mean, or even bad motives, may disinherit wholly or partially his children, and leave his property to strangers. He may take an unduly harsh view of the character and conduct of his children; but there is a limit beyond which it will cease to be a question of harsh, unreasonable judgment, and then the repulsion which a parent exhibits to his children must be held to proceed from some mental defect. If such repulsion, amounting to delusion as to character be shown, the burden will be cast on those propounding the will. Boughton *v.* Knight, L. R. 3 P. & D. 64. The American cases do not go to this extent. See cases cited *supra*, § 40.

[2] Dew *v.* Clarke, 5 Russ. Ch. C. 163.

§ 43. But in 1848, in a very remarkable case before the privy council, an opinion was delivered, without dissent, by Lord Brougham, as the judgment of himself, Lord Langdale, Dr. Lushington, and Mr. T. Pemberton Leigh, in which the notion of partial insanity on one point, as consistent with testamentary capacity, was explicitly repudiated.[1] It is true that the case was one in which the same result could have been reached even on Sir J. Nicholls' reasoning. The testatrix, who was advanced in years, was excessively penurious and eccentric, was extremely irritable, wrangled with her servants to an excess, at times indulged in very obscene conversation, believed herself the object of various amorous enterprises, and among others from Lord Melbourne, and Lord J. Russel, who she believed prowled about the house as fishwomen. All this, and more, on Sir J. Nicholls' hypothesis, might have been consistent with a testamentary capacity. But, in addition to this, it was shown that the testatrix had an insane delusion that her brother, whom she disinherited, had joined the Catholics, to whom she had an aversion, and haunted her house, also in disguise. Certainly, even on the theory of partial insanity, this, coupled as it was with an inquisition of lunacy, would have been enough to vacate the will. But Lord Brougham, in delivering the judgment of the privy council, went further. "The question being," he said, "whether the will was duly made by a person of sound mind or not, our inquiry, of course, is, whether or not the party possessed his faculties, and possessed them in a healthful state. His mental powers may be still subsisting, no disease may have taken them away, and yet they may have been affected with disease, and thus may not have entitled their possessor to the appellation of a person whose mind was sound.

And dissented from by Lord Brougham, *Waring* v. *Waring*.

"Again, the disease affecting them may have been more or less general; it may have extended over a greater or less portion of the understanding, or, rather, we ought to say, that it may have affected more or it may have affected fewer of the mental faculties. For we must keep always in view that which the inaccuracy of ordinary language inclines us to forget, that the mind is one and indivisible; that when we speak of its different powers or faculties,

[1] Waring *v.* Waring, 6 Moore P. C. C. 341 at p. 349.

as memory, consciousness, we speak metaphorically, likening the mind to the body, as if it had members or compartments, whereas, in all accuracy of speech, we mean to speak of the mind acting variously, that is, remembering, fancying, reflecting, the same mind in all these operations being the agent. We, therefore, cannot in any correctness of language speak of general or partial insanity; but we may most accurately speak of the mind exerting itself in consciousness without cloud or imperfection, but being morbid when it fancies; and so its owner may have a diseased imagination, or the imagination may not be diseased, and yet the memory may be impaired, and the owner be said to have lost his memory. In these cases we do not mean that the mind has one faculty, as consciousness, sound, while another, as memory or imagination, is diseased; but that the mind is sound when reflecting on its own operations, and diseased when exercising the combination termed imaginary, or casting the retrospect called recollecting.

"This view of the subject, though apparently simple, and almost too unquestionable to require or even to justify a formal statement, is of considerable importance when we come to examine cases of what are called, incorrectly, 'partial insanity,' which would be better described by the phrase 'insanity,' or 'unsoundness,' always existing, though only occasionally manifest.

"Nothing is more certain than the existence of mental disease of this description. Nay, by far the greater number of morbid cases belongs to this class. They have acquired a name—the disease called familiarly, as well as by physicians, 'monomania,' on the supposition of its being confined, which it rarely is, to a single faculty or exercise of the mind; a person shall be of sound mind, to all appearance, upon all subjects save one or two, and on these he shall be subject to delusions—mistaking for realities the suggestions of his imagination. The disease here is said to be in the imagination; that is, the patient's mind is morbid or unsound when it imagines; healthy and sound when it remembers. Nay, he may be of unsound mind when his imagination is employed on some subjects, in making some combinations, and sound when making others, or making one single kind of combination. Thus he may not believe all his fancies to be realities, but only some or one. Of such a person we usually predicate that he is of unsound mind only upon certain points. I have qualified the proposition thus on pur-

pose; because, if the being or essence which we term the mind is unsound on one subject, provided that unsoundness is at all times existing on that subject, it is quite erroneous to suppose such a mind really sound on other subjects. It is only sound in appearance; for if the subject of the delusion be presented to it, the unsoundness which is manifested by believing in the suggestions of fancy, as if they were realities, would break out; consequently, it is absurd to speak of this as a really sound mind (a mind sound when the subject of the delusion is not presented), as it would be to say that a person had not the gout, because, his attention being diverted from the pain by some more powerful sensation by which the person was affected, he, for the moment, was unconscious of his visitation. It follows, from hence, that no confidence can be placed in the acts, or in any act, of a diseased mind, however apparently rational that act may appear to be, or may in reality be. The act in question may be exactly such as a person without mental infirmity might well do. But there is this difference between the two cases; the person uniformly and always of sound mind could not, at the moment of the act done, be the prey of morbid delusion, whatever subject was presented to his mind; whereas, the person called partially insane—that is to say, sometimes appearing to be of sound and sometimes of unsound mind—would inevitably show his subjection to the disease the instant the topic was suggested. Therefore, we can, with perfect confidence, rely on the act done by the former, because we are sure that no lurking insanity—no particular, or partial, or occasional delusion—does mingle itself with the person's act and materially affect it. But we never can rely on the act, however rational in appearance, done by the latter, because we have no security that the lurking delusion, the real unsoundness, does not mingle itself with or occasion the act. We are wrong in speaking of partial unsoundness; we are less incorrect in speaking of occasional unsoundness; we should say that the unsoundness always exists, but it requires a reference to the peculiar topic, else it lurks and appears not. But the malady is there, and, as the mind is one and the same, it is really diseased, while apparently sound; and really its acts, whatever appearance they may put on, are only the acts of a morbid or unsound mind. Unless this reasoning be well founded, we cannot account for the unanimity with which men have always agreed in regarding as the acts of an insane mind those acts, to all

appearance rational, which a person does who labors under delusions of a plainly extravagant nature, though there is nothing in the act done, and nothing in the conduct of the party while doing it, at all connected with the morbid fancies. If these fancies only affect the party now and then, if for some months he is free from them—laboring under them at other times, then his acts apparently rational would not be regarded as those of a person mentally diseased. But if we were convinced that at the time of doing the acts the delusion continued, and was only latent by reason of the mind not having been pointed to its subject, and would have instantly shown itself had that subject been presented, then the act is at once regarded as that of a madman. Thus there have been many cases of persons laboring under the delusion that they were other than themselves; have believed themselves deceased emperors or conquerors; others, supernatural beings. Suppose one who believed himself the emperor of *Germany*, and on all other subjects was apparently of sound mind, did any act requiring mind, memory, and understanding. Suppose he made his will, and either did not sign it (before signing was required), or, if he did, signed it with his own name; but suppose we were quite convinced that, had any one spoken on the German Diet, or proceeded to abuse the German emperor, the testator's delusion would at once break forth, then we must at once pronounce the will void, be it as officious and as rational, in every respect, as any disposition of property could be. Of course, no one could propound such a will with any hopes of probate, if it happened that while making it the delusion had broken out, even although the instrument bore no marks of its existence at the time of its concoction. It must always be a question of evidence, on the whole facts and circumstances of the case, whether or not the morbid delusion existed at the time of the *factum;* that is, whether, had the subject of it been presented, the cord been struck, there would have arisen the insane discord which is absent, to all outward appearance, from the cord not having been struck. The principles which have been laid down do not at all differ from those on which the courts have acted, which text writers have construed, and which scientific men, both moralists and physicians, have approved. In the well-known case of Dew *v.* Clark, reported 3 Addams, 97, but also reported, with the great advantage of the learned judge's corrections, and published separately by Dr. Haggard, we find Sir John Nicholl

stating that mere eccentricity is not enough to constitute mental unsoundness, nor great caprice, nor violence of temper, but that there must be an aberration of reason; and he adopts a definition of delusion given by the learned counsel in the cause (now a member of this court), deeming it well described by the expression that 'it is a belief of facts which no rational person would have believed.' Perhaps, in a strictly logical view, this definition is liable to one exception, or, at least, exposed to one criticism, namely, that it gives a consequence for a definition; and it may be more strictly accurate to term 'delusion' the belief of things as realities which exist only in the imagination of the patient. The frame or state of mind which indicates his incapacity to struggle against such an erroneous belief, constitutes an unsound mind. Sir John Nicholl justly adds that such delusions are generally attended with eccentricities, often with violence, very often with exaggerated suspicions and jealousies. . . . . The existence of delusions being proved, and their continuance proved or assumed, at the date of the *factum*, so that the court is satisfied of the testatrix then laboring under their influence, it is wholly immaterial that they do not appear in the will itself. The party propounding often approached this point in argument, and repeatedly adverted to the fact—perhaps we should say the assertion or assumption—that this will betrays no marks of the alleged delusions, or generally of an unsound mind. There was a manifest disposition to lay down a rule that no person laboring under monomania, or partial insanity, can be deemed intestable, unless the kind of insanity appears on the face of the will. But there was wanting the courage to lay down a proposition which would at once have been rejected, and must have been met with the question, Could any court admit to probate the will of the man who said (in the case cited by Sir John Nicholl in Dew *v.* Clark), 'I am the Christ,' although that will bore no marks whatever of an unsound mind, still less of the dreadful delusion under which the party labored?"

His views pushed to the extreme.

§ 44. So far, indeed, has this doctrine been pushed that an extravagant and absurd passion for pets has been, in England, regarded as proof of incapacity. In one case this rule was applied to an unmarried woman who kept, in kennels in her drawing-room, fourteen dogs, of both

sexes;[1] and to another, who kept in her house a great multitude of cats, which were provided with regular meals, and were furnished with plates and napkins.[2] But are such extravagances necessarily proofs of insanity? May they not be sometimes marks simply of the desire to produce a sensation, such as that which led to the dog tea-parties which some years ago were got up as new excitements by the leaders of fashion in Rome? Or, if it were possible for a jury to put itself in the place of an unmarried and solitary woman of advancing years, would such capricious indulgence in pets appear any more inconsistent with sanity, than would an analogous indulgence, by a young man of dash and wealth, in hounds, horses, and foxes?

Followed by Lord Penzance. *Smith* v. *Tebbitt.*

§ 45. In 1867, in the court of probate and divorce, the position that a collateral insane delusion invalidates a will which was not directly the product of such delusion, was renewed by Sir J. P. Wilde (Lord Penzance) on the following state of facts:—

Ann Thwaytes, a widow, died in London on April 8, 1866, possessed of a fortune, left to her by her husband, of £500,000. By a will dated March 6, 1866, she left legacies amounting to £45,000 to her husband's family; legacies of the same amount to the family of her sister, Mrs. Tebbitt; legacies to a considerable amount to persons whom she had become acquainted with in the latter period of her life, to servants, and to charities; and the residue to John Simms Smith and to Samuel Smith. The will was contested by Mrs. Tebbitt; and on August 6, 1867, judgment was delivered by Sir J. P. Wilde.[3] He began by stating that "volition" to give disposing power "should be that of a mind of natural capacity, not unduly impaired by old age, or tainted by morbid influence. The inquiry before the court has relation only to the last of these conditions; and the subject is again narrowed by the nature of the morbid influence or mental disorder imputed; for it is not an obvious and general perversion of the mind from reason, nor of language or conduct generally irrational, that the testatrix is here accused; but *only of that peculiar form of mental malady which used to be called*

[1] Yglesias *v.* Dyke, Prer. Court, May, 1852, Taylor, 2d ed., ii. 556. Redfield on Wills, I. chap. iii. § 11.

[2] Ibid.

[3] Smith *v.* Tebbitt, L. R. 1 P. & D. 398.

partial insanity, and which, in the more exact language of modern science, has obtained the name of monomania. *A person who is affected by monomania, although sensible and prudent on subjects and occasions other than those upon which his infirmity is commonly displayed, is not in law capable of making a will. This has been clearly decided in the several cases quoted at the bar, of which it is only necessary to name that of Waring* v. *Waring.* It is needless to travel over the paths by which this conclusion has been reached. It is properly the starting-point in such an inquiry as the present. For I conceive the decided cases to have established this proposition: that if disease be once shown to exist in the mind of the testator, it matters not that the disease be discoverable only when the mind is addressed to a certain subject, to the exclusion of all others, the testator must be pronounced incapable. *Further, that the same result follows, though the particular subjects upon which the disease is manifested have no connection whatever with the testamentary disposition before the court.*" It is true that evidence as to Mrs. Thwaytes showed her mind to have been generally diseased. She called herself "the third person in the Trinity. She was the Holy Ghost, and Mr. Simms Smith was the Father." She believed she was the victim of attempts to poison. She was attended by the spirits of deceased friends. Her husband was "the devil," for whom she would not go into mourning. Her heirs-at-law were "doomed to perdition." She could "never die." She was "above God." She had a tiara of jewels made, in which she was to ascend to heaven. Her London drawing-room was furnished at an expense of £15,000 for the "day of judgment." While her husband was lying dead, and before his funeral, she made a draft will by which, with the exception of about £50,000, she bequeathed all her vast property to Dr. Smith. This was followed by an annuity of £2000 a year, and in after years by donations to the amount of £50,000. Yet Dr. Smith "was a stranger in blood to her, and is not shown," so speaks Sir J. P. Wilde, "up to the time of the above will, to have rendered her any service beyond ordinary medical advice, or filled any other relation to her than medical adviser. In after years he added to his medical advice the trouble of receiving her dividends, and paying them in to her bankers." Certainly evidence such as this does not show simply a "monomania" on any one special and isolated topic, disconnected with the

subject matter of testamentary disposition. If Mrs. Thwaytes was not insane, in the general sense of the term, she cherished insane delusions as to those who were the subjects on whom her will was to act. Hence, on the principle that "partial" insanity defeats a will which is its direct offspring, Mrs. Thwaytes's will, viewing her insanity as partial, would have been inoperative. But, as has been seen, the language of Sir J. P. Wilde goes beyond this. For he declares that mental disease destroys testamentary capacity "though the particular subjects upon which the disease is manifested have no connection whatever with the testamentary disposition before the court."[1]

But repudiated by the queen's bench. *Banks* v. *Goodfellow.*

§ 46. But in July, 1870, the general legal proposition thus stated was expressly repudiated by the court of queen's bench.[2] The will in dispute was one in favor of the testator's niece. It was made in 1863. He had been confined as a lunatic for some months in 1841. He was subject, down to the date of the will, to particular delusions—he was personally molested by a person who had been long since dead, and he was pursued by visible evil spirits. As to his general capacity the evidence was contradictory, but it was admitted that at times he was incapable of making a will. The jury were directed to consider whether, at the time of making the will, the testator was capable of having such a knowledge and appreciation of facts, and was so far master of his intentions, free from delusions, as would enable him to have a will of his own in the disposition of his property, and act upon it; and they were further directed that the mere fact of his being able to recollect things, or to converse rationally on some subjects, or to manage some business, would not be sufficient to show he was sane; while, on the other hand, slowness, feebleness, and eccentricities, would not be sufficient to show he was insane; and that the whole burden of showing that the testator was fit at the time, was on the party claiming under the will. It was ruled by the court in banc that the direction was practically right, for that it was immaterial whether the delu-

[1] See a notice of this decision in the British and Foreign Medico-Chir. Review for October, 1867.

[2] Banks *v.* Goodfellow, L. R. 5 Q. B. 549; Cockburn, C. J., Blackburn, Mellor, and Hannen, JJ. This has been followed in Boughton *v.* Knight (1873), L. R. 3 P. & D. 64, and Smee *v.* Smee (1879), L. R. 5 P. D. 84, both by Sir James Hannen, P. J.

sions remained latent or not at the time, if the testator was otherwise competent to make a will, as neither of the delusions—the dead man being in no way connected with the testator—had, or could have had, any influence upon him in disposing of his property. Lord Cockburn, C. J., in delivering judgment, said that "it was necessary to consider how far such a degree of unsoundness of mind as is involved in the delusions under which this testator labored would be fatal to testamentary capacity; in other words, whether delusions arising from mental disease, but not calculated to prevent the exercise of those faculties essential to the making of a will, or to interfere with the consideration of the matters which should be weighed and taken into account on such an occasion, and which delusions had, in point of fact, no influence whatever on the testamentary disposition in question, are sufficient to deprive a testator of testamentary capacity and to invalidate a will."

He then analyzed the proof of the existence of partial insanity in the testator, and after an extended review of the law, both English and American, he said: "No doubt, when the fact that the testator had been subject to any insane delusion is established, a will should be regarded with great distrust, and every presumption should in the first instance be made against it. When insane delusion has once been shown to have existed, it may be difficult to say whether the mental disorder may not possibly have extended beyond the particular form or instance in which it has manifested itself. It may be equally difficult to say how far the delusion may not have influenced the testator in the particular disposal of his property; and the presumption against a will made under such circumstances becomes additionally strong where the will is, to use the term of the civilians, an inofficious one, that is to say, one in which natural affection and the claims of near relationship have been disregarded. But when in the result the jury are satisfied that the delusion has not affected the general faculties of the mind, and can have had no effect upon the will, we see no sufficient reason why the testator should be held to have lost his right to make a will, or why a will made under such circumstances should not be upheld. Such an inquiry may involve, it is true, considerable difficulty, and require much nicety of discrimination; but we see no reason to think that it is beyond the power of judicial investigation and decision, or may not be disposed of by a jury directed or guided by a judge. In

the case before us, two delusions disturbed the mind of the testator, the one that he was pursued by spirits; the other that a man, long since dead, came personally to molest him. Neither of these delusions, the dead man not having been in any way connected with him, had, or could have had, any influence upon him in disposing of his property. Under these circumstances, then, we see no ground for holding the will to be invalid." The rule, therefore, which was applied for on the ground that the judge misdirected the jury, and that the verdict was against the weight of evidence, was discharged.

Conflict in these decisions. Lord Brougham's theory.

§ 47. We have, therefore, an apparent conflict in the English decisions as above recorded. On the one hand, in the view of Sir J. Nicholl, Chief Justice Cockburn, and Sir James Hannen,[1] "partial insanity," consisting of delusions and hallucinations not connected with the subject matter of a will, does not invalidate such will. On the other hand, in the opinions quoted from Lord Brougham and Lord Penzance, it is held that insanity or "mental disease," when it exists at all, destroys testamentary capacity, though it displays itself in delusions which in no way touch the subject matter of the will. If we view the question psychologically, as will hereafter be more fully done,[2] it will be difficult to overthrow the reasoning of Lord Brougham and Lord Penzance. We cannot hold one department of the mind to be sane, and the others insane, unless we adopt the compartment theory, which, as will hereafter be seen, is absurd.

[1] "A few years ago it was generally considered that if a man's mind were unsound in one particular, the mind being one and indivisible, his mind was altogether unsound, and therefore that he could not be held capable of performing rationally such an act as the making of a will. A different doctrine subsequently prevailed. If the delusions could not reasonably be conceived to have had anything to do with the deceased's power of considering the claims of his relations upon him and the manner in which he should dispose of his property, then the presence of a particular delusion would not incapacitate him from making a will. . . . This is an extremely delicate and difficult investigation, and may be illustrated by reference to the physical world. There might be a little crack in some geological stratum of no importance in itself, and nothing more than a chink through which water filters into the earth; but it might be shown that this flaw had a direct influence upon the volume, or color, or chemical qualities of a stream that issued from the earth many miles away. So with the mind." Sir J. Hannen in Smee *v.* Smee, L. R. 5 P. D. 84, at p. 90.

[2] *Infra*, §§ 533–572.

§ 48. In a modified form the compartment theory is thus exhibited in detail by Lord Chief Justice Cockburn.[1] "It is not given to man," he says, "to fathom the mystery of the human intelligence, or to ascertain the constitution of our sentient and intelligent being. But whatever may be its essence, every one must be conscious that the faculties and functions of mind are as various and distinct as are the powers and functions of our physical organization. *The senses*, *the instincts*, *the affections*, *the passions*, *the moral qualities*, *the will*, *perception*, *thought*, *reason*, *imagination*, *memory*, are so many distinct faculties or functions of mind. The pathology of mental disease, and the experience of insanity in its various forms, teach us that while, on the one hand, all the faculties, moral and intellectual, may be involved in one common ruin, as in the case of a raving maniac; in other instances, one or more only of these faculties or functions may be disordered, while the rest are left unimpaired and undisturbed; that, while the mind may be overpowered by delusions which utterly demoralize it, and unfit it for the perception of the true nature of surrounding things, or for the discharge of the common obligations of life, there often are delusions which, though the offspring of mental disease, and so far constituting insanity, yet leave the individual in all other respects rational, and capable of transacting the ordinary affairs and fulfilling the duties and obligations incidental to the various relations of life. No doubt, when delusions exist which have no foundation in reality, and spring only from a diseased and morbid condition of the mind, *to that extent the mind must necessarily be taken to be unsound*, *just as the body*, *if any of its parts or functions is affected by local disease*, *may be said to be unsound*, *though all its other members may be healthy and their powers or functions unimpaired*."

Contra, Cockburn, C. J.'s, compartment theory.

§ 49. If we take the last qualification, which is here placed in italics, as conceding the general unsoundness of such a mind, there is no practical difference between the opinion of Chief Justice Cockburn, on the one side, and the views of Lord Brougham, and of all sound modern psychologists, on the other side. But, going back to the beginning of the above extract, if it were the opinion of its able and eminent author, that (1) the

Objection to this view.

[1] Per Cockburn, C. J., Banks *v.* Goodfellow, *ubi supra*.

senses, (2) the instincts, (3) the affections, (4) the passions, (5) the moral qualities, (6) the will, (7) the perception, (8) the thought, (9) the reason, (10) the imagination, and (11) the memory, are independent and separate portions of the mind, so that one of these may be insane, and yet the individual may be in all other respects rational, we must reject such a position as not only philosophically incorrect, but as fraught with consequences dangerous to public justice. That such is the case will be hereafter fully shown.[1] It is enough now to say, that if we suppose a person to have an insane delusion of the "senses" (the first of C. J. Cockburn's "distinct faculties or functions of mind"), it is hard to conceive how such a delusion can continue to exist, if the other faculties remain in vigor. In fact, all men have, sleeping or waking, such delusions; and the question of sanity depends, not on the liability of the "senses" to delusion, but on the capacity of the other mental faculties to dispel the delusion. Thus, for instance, De Boismont tells us that, at a soiree given by M. Bellart, in Paris, some days before the execution of Marshal Ney, Prince of Moskowa, the usher, having the name of M. Marechal *Aîné* to announce, pronounced it "M. le Marechal *Ney*." "An electric shudder ran through the assembly, and, for my own part, I own that the resemblance to the prince was for a moment as perfect to my eyes as reality." The *delusion* was the effect of a highly excited imagination, seizing upon an association of sounds. The dispelling of this delusion was the result of "perception," "thought," "reason," and "memory," acting healthily. The delusion could not have continued to exist while these latter functions of mind continued in a healthy state. If it had continued to exist, this would have been a proof that these functions were diseased. Or, to state the proposition generally, no insane delusion can continue to operate, when proper modes have been taken to dispel it, while the reason is unimpaired. The fact that such a delusion continues to operate, under such conditions, proves the unsoundness of the reason.

§ 50. That such, indeed, is C. J. Cockburn's own conclusion, we gather from the concluding and italicized portions of the extract just quoted; and the apparent conflict of opinion to which we have adverted may therefore be reconciled when we recollect that as in

[1] *Infra*, §§ 142, 533–572.

sanity, so in insanity, there are various gradations, and that sanity and insanity, therefore, have a region in which they melt into each other imperceptibly.[1] To adopt an illustration that Lord Penzance borrows from Mr. Burke, we know what night is, and we know what day is, but it is hard for us to say when either day or night becomes twilight. Hence, just as some sane persons (*e. g.* in sleep or when acting under compulsion) may be irresponsible, so some insane persons may be responsible, and be legally viewed as such. A person may be of diseased mind, yet may be capable of testifying, in cases when such evidence is necessary,[2] in a court of justice; may make contracts, as has just been seen, which, when there is no unfairness, and the party contracted with is without notice, will be held binding; and may be responsible, though it may be in a diminished grade, for crime.[3] And it is clear that a person of a very low degree of intelligence, even when the mind is debilitated by old age, may make a will which, if not unduly influenced, will be good. Several cases to this effect have been already cited; and such cases, in fact, are relied on by Chief Justice Cockburn for the maintenance of the position that persons of "unsound mind" may, under certain circumstances, when they have a disposing memory, and when they have no delusion as to the testamentary subject matter, make a valid will.

Theories reconciled by supposition of mental twilight.

§ 51. If we accept the position just stated—that there may be degrees of mental disease which do not destroy testamentary capacity, provided the testator has at the time a disposing memory, and is not influenced by fraud or imposition—then we not only reconcile the cases which have been cited above, but we avoid a very embarrassing alternative. For, unless we concede that there may be grades in mental disease, and that in the lesser and more qualified grades there may be testamentary capacity, we must, in cases of collateral monomanias, hold either that the mind is divisible, so that one part may be sane and the other insane, or, as maintained by Lord Brougham

The mind is indivisible.

[1] See The Borderlands of Insanity, by Andrew Wynter, M.D., N. Y. 1875.

[2] R. *v.* Hill, 2 Den. C. C. 254; Fennel *v.* Tait, 1 C. M. & 84; Spittle *v.* Walton, 40 L. J. Ch. 368. *Infra*, § 242.

[3] See *infra*, § 122.

and Lord Penzance, that a single such monomania destroys capacity *in toto*. Let us examine these hypotheses singly.

First, that the mind is divisible, so that one part may be sane and the other insane. The psychological error of this hypothesis is elsewhere displayed.[1] Its practical absurdities may be here briefly noticed. If it be true, a testator, instead of being one person, is a combination of two, one sane, and another insane. His will, like himself, is divisible. That part which emanates from his insane delusions is void; the part that emanates from his sane judgment is valid. So as to his contracts. Supposing we assume this duality, we have, instead of *one* obligor, *two*—the insane part of the obligor, making obligations which are void; the sane part, making obligations which are valid. Or, if we hold that the will or the contract is avoided when the insane elements in the testator's or obligor's mind affect such contract or will, we must enter on the still more difficult task of deciding the extent to which such insane elements operate. What tests can we have for such an examination? Who can undertake to limit the operation of motives admitted to be insane, and therefore incapable of rational measurement? Who can undertake to say that these insane influences at a particular moment, by yielding to a sound judgment, become virtually sane?

Yet delusions need not destroy capacity *in toto*.

§ 52. On the other hand, if we hold that insane delusions, disconnected with the subject matter of a will, destroy testamentary capacity *in toto*, we are embarrassed with difficulties at least equally great. Many men whose testamentary capacity it would be monstrous to dispute, have confessed delusions whose sanity it would be equally monstrous to maintain.[2] Thus, Dr. Johnson was confident that he heard his deceased mother's voice, crying "Samuel;" nor was this hallucination ever corrected; and yet no one would maintain that he was incapable of making a will.

This proved by instances of delusions

§ 53. Lord Castlereagh, a short time before his suicide, gave a narrative of a supposed apparition, in which he firmly believed, and which exercised a material influence on his life. When in the Irish Parliament, he went to visit a

[1] See *infra*, §§ 532–572.

[2] See Visions, a Study of False Light, by E. A. Clarke, M.D., Boston, 1878; Illusions, by Jas. Sully, N. Y., 1881. And see an article on Auditory Hallucinations, in 8 Journ. Med. Sci. 597.

friend at a castle in the north of Ireland. Shown into a dark and venerable chamber, where there existed every material which would excite a superstitious imagination, having dismissed his valet, he went to bed. Hardly, however, was his candle extinguished, when he became aware of a glimmer of light in his room. No fire had been lighted—the curtains were closed—and no explanation affording itself of this phenomenon, he rose from the bed, when, to his surprise, on turning to the point whence the light proceeded, he perceived the figure of a young and beautiful child, with a halo encircling its brow. With perfect confidence in the reality of the object, but believing it had been got up artificially as a joke, he followed it until it nestled in the arch of the great chimney, and at last sunk beneath the fireboard. The next morning he sought in vain for a clue by which the mystery could be dispelled. It was a subject which his host evidently shunned. On putting the question pointedly, however, Lord Castlereagh was informed that it was true that such a spectre as that had been reported in former times to have appeared under the title of the "Radiant Child." Once again the phantom appeared to the same noble and capable statesman—but no longer, it is said, with a radiant crown. This last appearance was not long before his own self-destruction, and yet, if the exterior alone was considered, when he was at the height of his power and fame. Certainly the spectre can now be easily explained, because a man who is weak enough to commit suicide is not too strong to be haunted in a dream by an apparition of whose traditional reputation he had undoubtedly heard, though the recollection afterwards escaped him. And yet we have here a case of an hallucination so entire as to produce partial insanity on that point, and perhaps to have been a motive power in suicide. Still, it would hardly have been maintained that Lord Castlereagh, than whom no man of his day exhibited, when in public life, greater coolness or business clearness, was incapable, because of this single delusion, of making a contract or will.

affecting strong-minded persons.

§ 53 *a*. A similar anecdote is related of the late President Lincoln: "It was just after my election in 1860," so he is reported to have said to his secretary, Mr. John Hay, "when the news had been coming in thick and fast all day, and there had been a great 'hurrah, boys!' so that I was well tired out, and went home to rest, throwing myself on a lounge in my chamber. Opposite to where I lay was a bureau, with a swinging-glass upon it; and, in looking in

that glass, I saw myself reflected nearly at full length; but my face, I noticed, had two separate and distinct images, the tip of the nose of one being about three inches from the tip of the other. I was a little bothered, perhaps startled, and got up and looked in the glass; but the illusion vanished. On lying down again, I saw it a second time—plainer, if possible, than before; and then I noticed that one of the faces was a little paler—say five shades—than the other. I got up, and the thing melted away, and in the excitement of the hour I forgot all about it—nearly, but not quite, for the thing would once in a while come back again: but I never succeeded in bringing the ghost back after that, though I once tried very industriously to show it to my wife, who was worried about it somewhat. She thought it was a 'sign' that I was to be elected to a second term of office, and that the paleness of one of the faces was an omen that I should not see life through the last term."[1] Nor was this a single case of morbid cerebral action in the life of this remarkable man. "He was," says his biographer, Mr. Lamon, "readily impressed with the most absurd superstitions." "He lived constantly in the serious conviction that he was himself the subject of a special decree, made by some unknown and mysterious power, for which he had no name." "He had great faith in the virtues of the 'mad stone,' although he could give no reason for it, and confessed it looked like superstition." Twice was his nervous system so disordered, that it was necessary, according to the same authority, to withdraw him from his business associations, and place him, as had been the case with Lord Chatham, in seclusion.[2] Yet Mr. Lincoln was eminent for shrewd sense, for cool judgment, and for wise forethought in business, private as well as public. He enjoyed, to an almost unparalleled degree, the confidence not merely of those who knew him only by public reputation, but of those who thoroughly knew his private history. By both classes was he trusted with the highest stakes. He possessed in singular fulness, if we should judge from this estimate, the very qualities which constitute testamentary capacity. Yet Mr. Lincoln, on the strictest test above laid down, would have been incapable of making a will.

[1] The Life of Abraham Lincoln, etc., by Ward H. Lamon. Boston: J. R. Osgood & Co., 1872, p. 476. See, as to peculiarities of Mr. Garfield, North Am. Rev. for Jan. 1882, p. 10.

[2] Ibid., pp. 164, 241, 503. See Washington Irving's Life, by Pierre Irving, vol. iii. 141.

§ 54. It was the firm belief of Lord Herbert, of Cherbury, that a divine vision had indicated to him the correctness of a particular course of religious speculation which, on the faith of the supposed vision, he published, and which he made the basis of his future action. The second Lord Lyttleton was equally persuaded that a divine warning had admonished him of his approaching death. And no less confident, though less serious in its consequences, was the conviction of Philip, second Earl of Chesterfield, of the reality of a similar preternatural interference. One night, in the year 1652, he saw something white, like a spread sheet, at the head of his bed. He tried to seize it, but it slid away and disappeared. His thoughts immediately turning to his wife, who was at Networth, with her father, he hurried there, but was met by a servant with a letter from his wife, which informed him that precisely the same apparition had appeared to her, and had been the cause of the journey of the messenger whom she had dispatched to inquire as to his health.

§ 55. Abercombie gives an illustration of habitual hallucination which at the same time was consistent with reason. The patient, when he met a person in the street, was uncertain whether the latter was a real person or a phantom, though with close observation he was able to detect the dissimilarity. The features of the real person would be more decided, and more complete than those of the phantom; but the power of discrimination by this process was too uncertain to be relied on, and the only test of which the patient felt certain was that of the voice, footstep, or touch. The phantom had none of these; the substance, of course, had all. He had the faculty of recalling his visions at will, by powerfully fixing his attention on the conceptions of his mind, but while the hallucination could be invoked at will, it could not be arbitrarily dispelled. That it *was* an hallucination, he was perfectly convinced; and that it was entirely consistent with general reason was demonstrated by his clearness of head and business capacity.[1]

§ 56. A recent case in this country illustrates the same position with remarkable point. A merchant, who had for years managed with shrewdness and success an extensive business, became thoroughly imbued with the spirit rapping and spirit conversing halluci-

[1] In this connection, see The Athenæum for Jan. 17, 1880, and 26 Journ. Ment. Sci. 147.

nation. Though he conducted his business as well as those who were not thus afflicted, his family conceived that this and cognate eccentricities made him a fit subject for a commission of lunacy. This he soon discovered, and laid his plans accordingly. He had theretofore done a cash business, and his punctuality and accuraey had won him extensive credit. He immediately proceeded to buy a large stock of goods from a number of the most sagacious business men within his reach, and gave long notes in exchange. "I do not know how it strikes you," was the way he broached the matter to his family, "but whatever may have been your chances once, they are light now. All I have to do is to subpœna my friends to whom I have just given my notes, and you may depend upon it, they will not only testify strongly as to their opinion of my sanity, but will bring that opinion down to this particular hour."[1]

Important modifications of conduct have been caused by visions.

§ 57. The cases which have just been noticed comprise chiefly those in which, while the hallucination is positive, the practical deflection of conduct produced may be slight. This, however, cannot be said to be the case with those instances in which a supposed supernatural vision or monitor is received as a guide on the most momentous actions of life. Napoleon declared on many critical occasions that he was conscious of the preternatural vision of a star, which sometimes even appeared in his own cabinet, by which he allowed himself to be guided. Bernadotte, beyond doubt, on one important movement at least, was swerved from his course by the vision of an old woman. Constantine felt or feigned a similar impressibility. These cases, it is true, may be suspected; but suspicion cannot be thus cast on the multitudes of brave men who were driven in border or highland contests from the battle-field by a threatening wraith, or who were encouraged to the wildest sacrifices by the beckoning of an imaginary finger or the invocations of a preternatural voice.[2]

[1] See an article on The Hallucinations of Mahomet and others, 20 Journ. Ment. Sci. 561.

[2] In this connection may be referred to, Visions, A Study of False Light, by Edward H. Clarke, M.D., Boston, 1878; Illusions, by James Sully, New York, 1881; communications relating to a vision seen by the Rev. D. Jessopp, Athenæum, Jan. 17, 1880; and 26 Journ. Med. Sci. 147; an article on the Visions of Sane Persons, in Littell's Living Age, No. 1895, from the Fortnightly Review; Hallucinations of Hearing, article by Frederick Joly, M.D., 22 Journ. Med. Sci. 475.

§ 58. There are, however, other cases in which there is a general morbid derangement of all, or of a material portion, of the organs. To these, as well as to the great mass of instances where hallucination forms the groundwork, the observations of De Boismont, on the case of a man who supposed that he had sunk all his wealth at the bottom of a well, apply with great force. "It may be asked whether, in the state of mind in which the patient was, whose history we have related, he was capable of making a will. This is a very difficult question; but its solution is not an impossibility. When the conduct of the individual does not depart from received usages, when it is not controlled by one of those false ideas that make him hate his relations and friends without any motive, and when he regulates his expenses prudently, we do not think that whimsical actions, or words, the results of an erroneous belief, but having no influence on the prominent acts of his life, should deprive a person of his civil liberties, and of the power of making his will."

And even morbid derangement need not incapacitate.

§ 59. In conformity with what has been said, spiritualistic opinions, no matter how wild and unfounded they are, or how completely the party holding them may be the victim of the fraud and impositions of others, do not of themselves, if not producing special provisions based on information thus erroneously held to have been received, or subjecting the testator to a special fraudulent influence swaying his will, work testamentary incapacity.[1]

Spiritualistic delusions do not incapacitate unless subjecting testator to undue influence or affecting particular provisions.

But the influence that may be gained by a "medium," or by one practising on visionary and sentimental beliefs, is to be jealously scrutinized.[2]

[1] Robinson *v.* Adams, 62 Me. 369; see a note to this case, Redfield's Cases on the Law of Wills, 384; La Bau *v.* Vanderbilt, 3 Redf. N. Y. 384; Bonard's Will, 16 Abb. (N. Y.) Pr. N. S. 128; Norton *v.* Relley, 2 Eden, 286; Brown *v.* Ward, 53 Md. 376.

[2] See Lyon *v.* Home, L. R. 6 Eq. 655. In this case, wherein a deed of gift without consideration was given by an aged widow to Home, the spiritualist, Gifford, V. C., spoke of spiritualism as being "as presented by the evidence" (at all events), "mischievous nonsense, well calculated, on the one hand, to delude the vain, the weak, the foolish, and the superstitious; and, on the other, to assist the projects of the needy and of the adventurer." See Norton *v.* Relley, 2 Eden, 286.

In Smith's Will, Wisc. Sup. Ct. 1881, 8 N. W. Rep. 602, it was held that mere belief in spiritualism does not by itself incapacitate, though accompanied with

§ 60. We may therefore hold, in accordance with the tenor of the great body of American decisions, as well as with those

many eccentricities. From the opinion of the court we take the following: "The deceased was a person of vigorous intellect and will, had unbounded faith in the accuracy and soundness of his own judgment, and was moved to action by an earnest, sanguine temperament. In such a man we should naturally expect some peculiarities or eccentricities of conduct, but we find fewer of these disclosed in the evidence than might reasonably be looked for. It appears that for a short time—perhaps two or three months, but during what year is not shown—he advertised one of his callings by wearing on the front of his hat a small paper on which were printed the words, 'Solicitor of Patents.' Also, that he was seen at different times on skates in a public street of the city. It seems, however, that he was testing a new kind of skate which he had invented. Thus far we find no evidence that the deceased was not of sound mind when he executed the instrument propounded as his last will and testament. But there was another peculiarity of the deceased which will now be considered. He was what is commonly called a spiritualist. He had come to believe, that through certain mediums, he could communicate with the spirits of deceased persons. He received, through one of these mediums, what purported to be a message from his deceased wife, advising him to marry the appellant, to whom he was then paying his addresses. He doubtless believed the message was from his deceased wife. He also consulted mediums quite frequently concerning his business and proposed inventions. He once engaged in wheat speculations on advice from such sources. At first he was successful, but later operations were not so successful. It does not appear that he persisted in these speculations very long after fortune turned against him. During the French and German war he believed reports of the condition of the contest which he received from mediums, although different from the current newspaper reports. But when the evidence of the truth of the newspaper reports became strong, his confidence in the infallibility of the other reports was weakened. He received a communication purporting to be from his deceased wife after his last marriage, and after he had trouble with some of his children, approving of what he had done. This was evidently after he had executed his will. It does not appear whether or not he regarded the communication as genuine, but probably he did so regard it. But the intense faith of the deceased in the accuracy of his own judgment was a counterpoise to his belief in the possibility of obtaining direct messages from the other world. It led him to admit another element in his belief which would leave him free to follow his own judgment in a given case, no matter how strongly he might be pressed by supposed supernatural advice or entreaty to act against it. So he came to believe, as one witness states it, 'that there was more than one kind of spirits —some might try to fool him, and others might not.' It is perfectly obvious from the whole testimony that the infallible test which he applied to determine from which of these classes of spirits a given message came was this: If it accorded with his judgment, it came from the reliable class; if not, then it came from the other class and was to be disregarded."

just cited of Sir J. Nicholl and of Chief Justice Cockburn, that mental unsoundness, exhibiting itself in insane delusions collateral to the subject matter of the will, does not *per se* destroy testamentary capacity. Such delusions are, indeed, incompatible with entire sanity. They would destroy any will made under their influence. They cannot be regarded as diseases of special organs exclusively, but are the results of mental disease as an entirety. But they may nevertheless exist in a mind which has sufficient intelligence to be invested with testamentary power in respect to all subjects except those on which such delusions usually operate.[1]

Better opinion, that delusions do not *per se* destroy capacity.

Nor should it be forgotten that the effects of such incapacitation would be most cruel to the sufferer himself. Society is prone enough to make eccentricities and weaknesses the subject of con-

In Bonard's Will, *ut supra*, the testator held to Pythagorean doctrines, and, dying without kindred, left his property to the Society for Prevention of Cruelty to Animals. Held, that this was not evidence of insane delusion, even though the testamentary intention might not, otherwise than for the alleged delusion, have been entertained.

[1] See *infra*, §§ 125, 723, 740. Dr. Hammond, in an interesting tract on this particular question, has reached conclusions which, though we may dissent from some of his postulates, are in entire coincidence with the present state of our law. The results, as he states them, are as follows:—

1. That there is a form of insanity known as monomania, which is characterized by a perversion of the understanding in regard to a single object, or a limited series of objects.

2. That one of the most prominent features of this species of insanity is a morbid feeling of hatred to friends and relatives, and a disposition to do them injury.

3. That it is especially a symptom of monomania to imbibe delusions which exercise a governing influence over the mind of the affected individual, and force him to the commission of acts which in a state of sanity he would not perpetrate.

4. That the monomaniac has power to conceal his delusions, and to arrest the paroxysms of delirium to which he may be subjected.

5. That the testator, James C. Johnston, was affected with monomania; that he had conceived a dislike to his relatives; that he was subject to delusions in regard to them; that he was, in consequence, not free to make a will such as he would have made had he been sane; and that he had power to conceal his delusions, and to control his paroxysms of delirium.

6. That there could not possibly have been a lucid interval when the will was written, signed, acknowledged, and reaffirmed, because all these acts show a continuance of the delusions under which the testator labored.—*Insanity in its Medico-legal Relations.* Opinion Relative to the Testamentary Capacity of the late James C. Johnston, of Chowan County, North Carolina. New York, 1866. See also Boardman *v.* Woodman, 47 N. H. 120.

tempt, ridicule, or insult. The courts should be cautious how, by taking away the power to insure respect, they thus increase the misfortune of a class into which no man can assure himself he may not fall, which includes almost the whole of those whose lot it is to reach extreme old age, and which already carries a burden sufficiently heavy. If such persons cannot reward by their bounty those by whom they are treated with tenderness, and by whose means their comfort is guarded, they will lose, in most instances, the only means remaining to them of self-preservation. As society at present stands, the only remedy seems to be to throw the same tender guardianship around the feeble-minded and the eccentric as, in a passage elsewhere cited, has been so touchingly invoked by Chancellor Kent for the old.

III. LUCID INTERVALS.[1]

Where habitual insanity is shown, lucid intervals must be proved.

§ 61. Unless what in the courts has been called *habitual* insanity be shown, *i. e.*, such insanity as is, in its nature, continuous and chronic, the fact of the existence of a prior period of lunacy does not suffice even to throw the burden of proof on the party setting up competency.[2] The case, however, is otherwise, when such habitual insanity is shown to have existed; in which case the presumption is that the party was insane at the time, and the burden is on those seeking to prove the contrary.[3] "If you can establish," says Sir Wm. Wynne, as cited by Mr. Jarman,[4] "that the party afflicted habitually by a malady of the mind has intermissions, and if there was an intermission of the disorder at the time of the act; that, being

[1] See, for the psychological view of this question, *infra*, § 744.

[2] State *v.* Wellington, 58 Me. 453; Lewis *v.* Baird, 3 McLean, 55; Turner *v.* Rusk, 53 Md. 65; Carpenter *v.* Carpenter, 8 Bush, 283; Achey *v.* Stephens, 8 Ind. 411; Menkins *v.* Lightner, 18 Ill. 282; Brown *v.* Riggin, 94 Ill. 560.

[3] Halley *v.* Webster, 21 Me. 461; Clark *v.* Fisher, 1 Paige, 171; Jackson *v.* Vandusen, 5 Johns. 144; Gombault *v.* Public Admr., 4 Bradf. 226; Harden *v.* Hays, 9 Pa. St. 151; Aurentz *v.* Anderson, 3 Pitts. 310; Harrison *v.* Rowan, 3 Wash. C. C. R. 580; Stevens *v.* Vancleve, 4 Wash. C. C. R. 262; Frazer *v.* Frazer, 2 Del. Ch. 260; Taylor *v.* Creswell, 45 Md. 422; Carpenter *v.* Carpenter, 8 Bush. 283; Rush *v.* Megee, 36 Ind. 69; State *v.* Reddick, 7 Kans. 143; White *v.* Wilson, 13 Ves. 87; White *v.* Driver, 1 Phill. 84; Hoge *v.* Fisher, 1 P. C. C. R. 163; Smith *v.* Tebbitt, L. R. 1 P. & D. 398; Ayrey *v.* Hill, 2 Add. 206. For other cases, see *infra*, §§ 246–269.

[4] 1 Jarm. on Wills, 5th Am. ed., Bigelow, *37, R. & T. 72.

proved, is sufficient, and the general habitual insanity will not affect it; but the effect of it is this: it inverts the order of proof and presumption; for, until proof of habitual insanity, the presumption is, the party agent, like all human creatures, was rational; but when an habitual insanity in the mind of the person who does the act is established, then the party who would take advantage of the fact of an interval of reason must prove it." And in a Massachusetts case, Dewey, J., said, "neither observation nor experience shows us that persons who are insane from the effect of some violent disease, do not usually recover the right use of their mental faculties. Such cases are not unusnal, and the return of a sound mind may be anticipated from the subsiding or removal of the disease which has prostrated their minds. It is not, therefore, to be stated as an unqualified maxim of the law, 'once insane, presumed to be always insane;' but reference must be had to the peculiar circumstances connected with the insanity of an individual, in deciding upon its effects upon the burthen of proof, or how far it may authorize the jury to infer that the same condition or state of mind attaches to the individual at a later period. There must be kept in view the distinction between the inferences to be drawn from proof of an habitual or apparently confirmed insanity, and that which may be only temporary."[1]

§ 62. When a lucid interval is set up as the period in which a will was executed, it being established that the testator was previously habitually insane, it is necessary to show not merely a cessation of the more violent symptoms of the disease, but a restoration of the faculties, at the very period of such execution.[2] But it is not necessary that the restoration be to a state of mind equal to that originally possessed by the patient. It is enough if he have a disposing mind.[3]

Restoration of disposing mind must be shown.

[1] Hix *v.* Whittemore, 4 Metc. 545. See Turner *v.* Rusk, 53 Md. 65; Williams on Exrs., 6th Am. ed., 34.

[2] Halley *v.* Webster, 21 Me. 261; Gombault *v.* Public Admr., 4 Bradf. Sur. 226; Boyd *v.* Eby, 8 Watts, 66; Harden *v.* Hays, 9 Penn. St. 151; Gangwere's Est., 14 Penn. St. 417; Chandler *v.* Barrett, 21 La. Ann. 58; Rush *v.* Megee, 36 Ind. 69; Hall *v.* Warren, 9 Ves. Jr. 605; Holyland *ex parte*, 11 Ves. Jr. 10; Steed *v.* Calley, 1 Keen, 620; Brogden *v.* Brown, 2 Add. 441; Ayrey *v.* Hill, 2 Add. 206; White *v.* Driver, 1 Phill. 84; Sutton *v.* Sadler, 3 C. B (N. S.) 87. See *infra*, § 246. Jar. Wills, 5th Am. ed., R. & T. 77.

[3] See cases *supra;* Clark *v.* Fisher, 1 Paige, 171; Jackson *v.* Vandusen, 5 Johns. 144; Lucas *v.* Parsons, 24 Ga.

§ 63. Where no extraneous influence is shown to have been exerted, the character of the act itself, as will soon be noticed, goes far to determine the capacity of the party at the particular time. Thus Dr. Lushington said:[1] "In the opinion of a very great judge, Sir William Wynne, in the celebrated case of Cartwright *v.* Cartwright, he said where a rational act was done in a rational manner, such was the strongest and best proof which could arise even as to a lucid interval. Now, I cannot say that I subscribe altogether to this observation of Sir William Wynne, for I do not, but it is entitled to great weight; and, to a certain extent, a rational act done in a rational manner, though not, I think, the strongest and best proof of a lucid interval, does contribute to the establishment of a lucid interval." And, generally, the rational character of a will, emanating directly from a testator afflicted with insanity, gives in itself a strong presumption of a lucid interval.[2]

Rational character of act affords presumption of sanity.

§ 64. The hypothesis of idiocy is negatived by proof of business capacity. Thus in an English case elsewhere noted, the evidence showed that the deceased was, in 1815, placed in confinement as an idiot, and there remained till 1817, when he was released. In 1820, about which time he was proved to have committed certain rational acts of business, he made a rational will. In 1822, he was again placed in confinement, and so remained till his death, in 1849. In 1833 he was found, on a commission, to have been of unsound mind, without lucid intervals, since 1815. The will was sustained, on the ground, that, though

And in idiocy a proof.

640; Lilly *v.* Waggoner, 27 Ill. 395. But where a party is assumed to be insane at the time of placing a holograph will among his valuable papers, there must be clear proof of his retaining it therein in a lucid interval, to give it effect as a valid disposition of his property. It would be too broad to say that if at any time after he was of sound mind, and then retained it among his papers, it would be conclusive that he intended it to be his will. Porter *v.* Campbell, 58 Tenn. 81. See *infra*, § 744.

[1] Bannatyne *v.* Bannatyne, *supra*, § 21. See Clark *v.* Fisher, 1 Paige, 171; Young *v.* Barner, 27 Gratt. 96; Kingsbury *v.* Whitaker, 37 La. Ann. 1055; Chambers *v.* Queen's Proctor, 2 Curt. 415; McAdams *v.* Walker, 1 Dow, 148, at p. 178. A discharge from a lunatic asylum is *prima facie* evidence of restoration. Haynes *v.* Swann, 6 Heisk. (Tenn.) 560.

[2] Nichols *v.* Binns, 1 Sm. & Tr. 239. See *infra*, § 83.

it is otherwise with regard to lunacy, yet, when idiocy is set up, it is disproved by contemporaneous intelligent acts of business.[1]

IV. INTOXICATION.

Drunkenness to destroy business capacity must be complete.

§ 65. As has been already shown,[2] intoxication, when complete, renders a party incompetent to make a binding contract, although a contract made by him when intoxicated, and voidable on this ground, may be ratified by him when sober.

So as to wills.

§ 66. On the same principle it is held that to avoid a will there must be proved drunkenness to such an extent as to have rendered the party unconscious of what he was doing.[3] If he know what his estate consists of, and who are the proper objects of his bounty, the mere fact that he is under stimulants at the time of making the will does not affect its validity.

Except in case of undue influence.

§ 67. Where, however, in addition to the fact that the party was intoxicated at the time, he was then under the influence of others, a degree of intoxication sufficient merely to subject him to such influence may be ground for avoiding the will, although such intoxication, without such proof of undue influence, would not have that effect.[4]

When party is intentionally made drunk, will is void.

§ 68. Where, again, a will is executed under the influence of drink intentionally and fraudulently administered, it is invalid, by the operation of a rule already noticed with regard to contracts;[5] but where neither fraud nor undue influence is shown, actual derangement of the reasoning faculties, arising from undue excitement, must be established. If the mere existence of excitement produced by stimulants be held to vitiate any act performed during its continuance, many

[1] Bannatyne *v.* Bannatyne, *ut supra*.

[2] *Supra*, § 16. See an article entitled "The Quality of Mental Operations Debased by the Use of Alcohol," by T. L. Wright, M.D., in "The Alienist and Neurologist." St. Louis, July, 1881.

[3] Shelford on Lunacy, 276; Gardner *v.* Gardner, 22 Wend. 526; Peck *v.* Carey, 29 N. Y. 9; Starrett *v.* Douglass, 2 Yeates, 48; Andress *v.* Weller, 3 N. J. Eq. 604; Turner *v.* Cheeseman, 15 N. J. Eq. 243; Pancoast *v.* Graham, *id.* 294; Pierce *v.* Pierce, 38 Mich. 412; Temple *v.* Temple, 1 Hen. & Munf. 476; Hebert *v.* Winn, 24 La. Ann. 346; Key *v.* Holloway, 7 Baxt. 575; Gore *v.* Gibson, 13 M. & W. 623.

[4] Shelford on Lunacy, 274, 304.

[5] Wheeler *v.* Alderson, 3 Hagg. 602.

meritorious wills, whose terms are peculiarly calculated to maintain the peace and well-being of a family, as well as to carry out the testator's mature intentions, would be set aside.

Habitual drunkard not necessarily incapacitated.

§ 69. And not even long continued habits of intoxication will of themselves afford a presumption of incapacity, unless the testator was proved to have been so drunk at the time as to be ignorant of what he was doing, or to have been under undue or fraudulent influence. Unless the latter conditions exist, there must be a downright incapacity, an entire loss of control over mind and body, in order to invalidate a will.[1]

Mere stimulation does not incapacitate.

§ 70. As has already been incidentally shown, the fact that a party making a will is at the time under the influence of stimulants does not invalidate the will. To work incapacity his judgment must be affected or his affections perverted by the stimulant. The reason of this distinction between drunkenness and insanity is well pointed out by Sir John Nicholl. Insanity, he argued, may often be *latent*, whereas there can scarcely be such a thing as latent ebriety; and, consequently, all that is required to be shown, in ordinary cases, is the absence of excitement at the time of the act done; at least, the absence of excitement in any such degree as would vitiate the act done; "for," he said, "I suppose it will be readily conceded that, under a mere slight degree of that excitement, the memory and the understanding may be, in substance, as correct as in the total absence of any exciting cause. Whether, where the excitement in some degree is proved to have actually subsisted at the time of the act done, it did or did not subsist in the requisite degree to vitiate the act done, must depend, in each case, upon a *due* consideration of all the circumstances of that case in particular; it belonging to a description of cases that admits of no more definite rule, applicable to the determination of them, than the one I have suggested, that I am aware of."[2]

[1] Ayrey *v.* Hill, 2 Add. 206; Gardner *v.* Gardner, 22 Wend. 526; Julke *v.* Adam, 1 Redf. 454; McLaughlin's Will, 2 Redf. 504; Thompson *v.* Kyner, 65 Penn St. 368; Ritter's App. 59 Penn. St. 9; Whitenack *v.* Stryker, 2 N. J. Eq. 8; Andress *v.* Weller, 3 N. J. Eq. 604; Pierce *v.* Pierce, 38 Mich. 412: Black *v.* Ellis, 3 Hill (S. C.) 68. See, also, Shelford on Lunacy, 276.

[2] Ayrey *v.* Hill, 2 Add. 206; S. P. Key *v.* Holloway, 7 Baxt. 575.

§ 71. In the end, however, habitual drunkenness may produce either continued insanity or an imbecile condition, which renders the party unfit for the transaction of any business. As is well said by Harrington, J., in the often quoted case of Duffield *v.* Morris,[1] "the probable cause of insanity often affords valuable aid in determining its character. Drunkenness is itself a species of insanity . . . but long-continued habits of intemperance may gradually impair the mind and destroy the memory and other faculties, so as to produce insanity of another kind. . . . The form of insanity usually produced by intemperance is *mania à potu* or *delirium tremens*, which is a raging and decided insanity that cannot be mistaken, temporary in its duration, and when off is followed not only by a lucid interval, but by permanent restoration to reason. Yet it is not improbable that drunkenness, long-continued or much indulged in, may produce on some minds and with some temperaments permanent derangement, fixed insanity." Under such circumstances capacity will be permanently destroyed.

Habitual drunkenness may produce insanity or imbecility.

§ 72. In a recent (1878) case in Michigan[2] a will was determined against by a jury on the grounds of intoxication and undue influence. But the supreme court ordered a new trial, partly on the ground that the jury had plainly decided against the weight of the testimony. "Intoxication," said Campbell, C. J., "is a term capable of no precise definition, and there may be many degrees of it. If it exists to such an extent as to deprive a testator of the power of controlling his conduct, and knowing what he is about, it will, of course, have a very evident bearing on his capacity. But if, on the other hand, the act which he does is one which his intoxication does not prevent him from doing with comprehension, it cannot of itself avoid it. . . . It is not impossible for a person more or less intoxicated to make a will which is not the product of the intoxication. . . . Inasmuch as it is a temporary condition, the testimony must be confined to the time involved in the transaction in controversy. If Pierce was not over-

Illustrative cases. Pierce *v.* Pierce.

[1] 2 Harr. 375. See, also, Gardner *v.* Gardner, 22 Wend. 526; M'Sorley *v.* M'Sorley, 2 Bradf. Sur. 188; Kingsbury *v.* Whitaker, 32 La. Ann. 1055.

[2] Pierce *v.* Pierce, 38 Mich. 412, at p. 417.

come by drunkenness when he made his will, it is not important what his condition was on other occasions."

Handley *v.* Stacey.

§ 73. In a trial before Lord Campbell, at *nisi prius*, a will[1] being impeached on the ground the testator's mind was impaired by drinking, it appeared that the testator had been frequently drunk, had had an attack of *delirium tremens* a few days before the execution of the will, and that the will was drawn by a son of the principal devisee, at the latter's house, he being an old friend of the testator. Lord Campbell ruled that the question was simply whether the testator was sane and sensible at the time of making the will, and able to understand its contents. If so, and if the will was his spontaneous act, free from force or fraud, it was valid.

Peck *v.* Carey.

§ 74. In Peck *v.* Carey, the probate was contested on the ground that the testator was intoxicated at the time the will was made. The case came before the court of appeals in 1863, and on this point C. J. Denio said: "It is not to be understood that a will made by one, who is at the time under the influence of intoxicating liquor, is, for that reason, void. Intoxication is said to be temporary insanity. The brain is at the time incapable of performing its proper functions; but that species of derangement ceases, when the exciting cause is removed, and sobriety brings with it a return of reason. In order to avoid a will made by an intemperate person, it must be proved that he was so excited by liquor, or so conducted himself during the particular act, as to be, at the moment, legally disqualified from giving effect to it."[2]

Use of medicines may produce incapacity.

§ 75. In analogy with the principles stated above, it has been held that mental incapacity on the part of the testator, when produced by the use of medicines, is sufficient to invalidate his will.[3]

V. UNDUE INFLUENCE AND FRAUD.

§ 76. While the learned judge who tried Lord Portsmouth's case, which has just been cited, came to the conclusion that Lord Ports-

[1] Handley *v.* Stacey, 1 F. & F. 574.

[2] Peck *v.* Carey, 27 N. Y. 17.

[3] Stedham *v.* Stedham, 32 Ala. 525; Garrison *v.* Blanton, 48 Tex. 299; Scanlan *v.* Cobb, 85 Ill. 296. See an article in Am. Journ. of Insanity for 1872, p. 13.

mouth was of "unsound mind," the position was broadly taken by him that weakness alone, when circumvented by fraud, would be sufficient to invalidate even so solemn a contract as marriage, and on this position his decision in part rested. Still more unequivocal was the decree of the privy council in dismissing an appeal from the court of chancery of the Isle of Man, setting aside two deeds, on the ground that the grantor in both of them was of unsound mind at the time he executed them, and that they were obtained from him by fraud and undue means. The evidence showed that the grantor, an old man, feeble both in body and mind, separated from all his relations, without a friend to advise him, and surrounded by those only who were contriving to get his fortune, conveyed away nearly all that he was possessed of, even the house he lived in, to persons not related to him, either by blood or marriage; and all his estate in lease was to become the property of the same strangers after his death. The consideration of £100 was inserted for conveying away property worth £1400; and this was not to be paid to the grantor, but to his executor after his death, without any interest being charged on it in the mean time. Lord Wynford, in giving the opinion of the privy council, said, that the law would "not assist a man who is capable of taking care of his own interests, except in cases where he has been imposed upon by deceit, against which ordinary prudence could not protect him. If a person of ordinary understanding, on whom no fraud has been practised, makes an improvident bargain, no court of justice can release him from it. Inadequacy of consideration is not a substantial ground for setting aside a conveyance of property. But those who, from imbecility of mind, are imcapable of taking care of themselves, are under the special protection of the law. The strongest mind cannot always contend with deceit and falsehood; a bargain, therefore, into which a weak one is drawn under the influence of either of these, ought not to be held valid, for the law requires that good faith should be observed in all transactions between man and man. If this conveyance could be impeached on the ground of the imbecility of the grantor only, a sufficient case has not been made out to render it invalid; for the imbecility must be such as to justify the jury, under a commission of lunacy, in putting his property and person under the protection of the chancellor; *but a degree of weakness of*

Fraud acting on weakness invalidates contracts and deeds.

intellect far below that which would justify such a proceeding, coupled with other circumstances to show that the weakness, such as it was, had been taken advantage of, will be sufficient to set aside any important deed."[1] This same view has been uniformly acted on in the English and American courts, and it is expressed by Mr. Justice Story with his usual felicity.[2] "The acts and contracts of persons who are of weak understandings, and who are thereby liable to impositions, will be held void in courts of equity, if the nature of the act or contract justify the conclusion, that the party has not exercised a deliberate judgment, but has been imposed upon, circumvented, or overcome by cunning or undue influences."[3] But, when articles furnished are suitable necessaries, the estate of a person of weak mind is liable, if there be no fraud.[4]

Still more so wills.

§ 77. With even greater emphasis has the same doctrine been announced by courts of law in respect to wills. Peculiarly liable as is a dying man, even though his intellect be of average strength, to have his comfort destroyed, if not his purpose overturned, by those in whose society he is placed, the policy of the law has anxiously sought for every safeguard by which such intrusions upon the sanctity of dissolution, as well as upon the rights of families, can be deprived of motive. "The same memory for the making of a will," agreed all the judges of England at an early date, "is not at all times when the party can answer to anything with sense, but he ought to have judgment to discern and to be of perfect memory, otherwise the will is void."[5] "He ought to have a disposing memory," said Lord Coke, "so that he is able to make a disposition of his lands with understanding and reason; and that is such a memory as the law calls sane and perfect."[6] While, therefore, it is only necessary that there

[1] Blackford *v.* Christian, 1 Knapp, 73; Shelford on Lunacy, 272.

[2] 1 Story Eq. Juris. § 238.

[3] See also 1 Fonbl. Eq. B. 1, ch. 2, § 3; Holland *v.* Miller, 12 La. Ann. 624.

[4] Skidmore *v.* Romaine, 2 Bradf. Sur. 122.

[5] Combe's case, Moore, 759.

[6] Marquis of Winchester's case, 6 Rep. 23*a*; 2 Buls. 211. The same point is thus put by Judge Washington: "Had he a disposing memory—was he capable of recollecting the property he was about to bequeath, the manner of distributing it, and the objects of his bounty?" (Stevens *v.* Vancleve, *supra*, § 25 and note). Proof, however, of intellect having been impaired by disease, or of intellectual feebleness alone, will not avail by itself to defeat a will, when adequate capacity remains.

should be the capacity of reasonable disposition, great jealousy has been exercised for the correction of extraneous influence on the testator. Thus wills have been set aside when they were preceded by over-importunity of friends standing in confidential relations,[1] where the housekeeper and physician were shown to have earnestly urged a non-natural scheme of distribution ;[2] where the wife in fact dictated the will, the testator being at the time unable to speak, she pretending to understand him, and making herself the sole devisee for life, and imposing as a devisee in remainder a fictitious niece ;[3] where one relation produced the disinheritance of another by false representations as to his character ;[4] where the testator was old and feeble, and the will was made under the directions and to suit the purposes of a colored woman in the family; and where a husband exercised coercion.[6] In short, whenever the provisions of a will are inconsistent with natural justice, it will require strong proof of capacity and volition to sustain it, and slight proof of undue influence or fraud to set it aside.[7] To authorize a will in favor of

Sloan *v.* Maxwell, 2 Green Ch. 563; Andress *v.* Weller, ibid. 604; Dornick *v.* Reichenback, 10 S. & R. 84. The cases will be found enumerated in 1 Powell on Devises, 127; Shelford on Lunacy, 275–6; 4 Kent's Com. 566 ; 1 Jarman on Wills, 28. See, also, Converse *v.* Converse, 21 Vt. 168; Horne *v.* Horne, 9 Ired. 99; Harrison *v.* Rowan, 6 W. C. C. R. 580; Grabill *v.* Barr, 5 Penn. St. 441 ; Den *v.* Johnson, 4 N. J. L. 454; Kinne *v.* Kinne, 9 Conn. 102; Ford *v.* Ford, 7 Humph. 92; Howard *v.* Coke, 7 B. Mon. 665 ; Blanchard *v.* Nestle, 3 Denio, 37; Modern Probate of Wills, 91. In Scotland an arbitrary test is applied, it being there provided that no settlement or gift executed after the commencement of the disease of which a person dies, except those in the ordinary administration of the estate, shall be valid. If the testator survives sixty days afterwards, or has been to market unsupported, the will is validated. Bell's Dict. "Death Bed "

[1] Hacker *v.* Newborn, Style, 427; Bates *v.* Bates, 27 Iowa, 110.

[2] Fearon *ex parte*, 5 Ves. Jr. 633.

[3] Scribner *v.* Crane, 2 Paige C. C. R. 147.

[4] Dietrick *v.* Dietrick, 5 S. & R. 207 ; Nussear *v.* Arnold, 13 S. & R. 323; Patterson *v.* Patterson, 6 S. & R. 54.

[5] Denton *v.* Franklin, 9 B. Mon. 28.

[6] Marsh *v.* Tyrrell, 2 Hag. Ecc. 84.

[7] Brydges *v.* King, 1 Hag. Ecc. R. 256; Rollwagen *v.* Rollwagen, 63 N. Y. 504; Kinne *v.* Johnson, 60 Barb. 69; Brick *v.* Brick, 66 N. Y. 144; Snyder *v.* Sherman, 23 Hun, 139; Baker *v.* Lewis, 4 Rawle, 356; Bitner *v.* Bitner, 65 Penn. St. 347; Goble *v.* Grant, 3 N. J. Eq. 629; Lyons *v.* Van Riper, 26 N. J. Eq. 337; Cadwallader *v.* West, 48 Mo. 483; Tobin *v.* Jenkins, 29 Ark. 151. In a case in Connecticut D. gave $4000 out of $14,000 to relatives, and the rest to a church. The will was drawn by H. who was a vestryman of the church, and who was left sole executor. D.'s family were not notified

a wife, however, to be set aside, the influence alleged to have been exerted must be shown to have reached coercion, impairing the husband's free agency,[1] or fraud must be proved.[2] In ordinary cases also, it will not be enough to prove mere influence, without proof of fraud or contrivance, or such coercion as destroys free agency. "Honest intercession and persuasion," "and fair and flattering speeches," though abundantly proved to have been used, do not affect the instrument's validity.[3] The fact of the paper being entirely in a party's handwriting gives a strong presumption of cotemporaneous sanity, which is not effaced by proof of generally impaired intellect, nor by the fact, that, when the paper is a will, it is marked by omissions of property.[4] The same presumption exists when the testator has a distinct recollection, at the time of the execution of the will, of the terms he directed at the time it was prepared.[5]

of his dangerous illness till after the execution of the will, which was witnessed by H. and another vestryman and H.'s brother-in-law, and which misdescribed certain relatives of D. *Held*, that these were circumstances requiring explanation on the part of the propounders of the will, and that the jury might consider the question of undue influence without any direct proof of such influence. Hovey and Pardee, JJ., dissenting. Drake's App., 45 Conn. 9.

[1] Barnes *v.* Barnes, 66 Me. 286; Clark *v.* Sawyer, 3 Sandf. Ch. 351; Gardner *v.* Gardner, 22 Wend. 526; see Rollwagen *v.* Rollwagen, 63 N. Y. 504, for a case where there was such coercion and fraud; Bicknell *v.* Bicknell, 2 T. & C. 96; Zimmerman *v.* Zimmerman, 23 Penn. St. 375; Hopple's Est., 7 W. N. C. (Pa.) 523; Pingree *v.* Jones, 80 Ill. 177; Tingley *v.* Cowgill, 48 Mo. 291; Rankin *v.* Rankin, 61 Mo. 295; Boyse *v.* Rossborough, 6 H. L. C. 47; 1 Redf. Wills, chap. x. section 2; Wisener *v.* Maupin, 58 Tenn. 342. See Stultz *v.* Schaeffle, 16 Jur. 909; 18 Eng. L. & Eq. 576.

[2] Scribner *v.* Crane, 2 Paige, 147.

[3] In general, the persuasion and influence of friends and attendants are not such as to properly constitute undue influence. Hoge's Will, 2 Brewst. (Pa.) 450; Williams's Est., 8 W. N. C. (Pa.) 202; Gleespin *in re*, 26 N. J. Eq. 523; Hughes *v.* Murtha, 32 N. J. Eq. 288; Eddy's Case, id. 701; Chandler *v.* Ferris, 1 Harr. (Del.) 454; Sutton *v.* Sutton, 5 Harr. 459; Sechrest *v.* Edwards, 4 Metc. (Ky.) 163; Harrison's Will, 1 B. Mon. 351; Lucas *v.* Cannon, 13 Bush, 650; Roe *v.* Taylor, 45 Ill. 485; Yoe *v.* McCord, 74 Ill. 33; Allmon *v.* Pigg, 82 Ill. 149; McIntyre *v.* McConn, 28 Iowa, 480; Rabb *v.* Graham, 43 Ind. 1; Gilreath *v.* Gilreath, 4 Jones' Eq. (N. C.) 142; McDaniel *v.* Crosby, 19 Ark. 533; Jackman's Will, 26 Wis. 104; Carroll's Will, 50 Wis. 437. Even importunate persuasion is not undue influence. Tawney *v.* Long, 76 Penn. St. 106.

[4] McDaniel's Will, 2 J. J. Marsh. 331; Fulleck *v.* Allison, 3 Hagg. 527.

[5] Hathorn *v.* King, 8 Mass. 371.

§ 78. In an issue, tried in Pennsylvania in 1862, on the validity of a writing purporting to be a will, a party set up as a defence great imbecility in the testatrix, and undue influence and actual duress. The case came before the supreme court on a writ of error, and on the point of undue influence Judge Strong said: "Now, that is undue influence which amounts to constraint, which substitutes the will of another for that of the testator." "It may be either through threats or fraud, but, however exercised, it must, in order to avoid a will, destroy the free agency of the testator at the time when the instrument is made."[1]

Undue influence must amount to constraint.

So, in Alabama, it has been said, that to set aside a will on the ground of undue influence, it must be shown that the influence exerted on the mind of the testator was equivalent to moral coercion, and constrained him, through fear, the desire of peace, or some other feeling than affection, to do that which was against his will.[2]

§ 79. The question is not one of undue influence, for if so, there are few wills which would not be put in peril. A testator is natu-

[1] Eckert *v.* Flowry, 43 Penn. St. 46.

[2] Hall *v.* Hall, 38 Ala. 131. Undue influence must amount to a moral constraint, destroying free agency. Barnes *v.* Barnes, 66 Me. 286; Breed *v.* Pratt, 18 Pick. 115; Shailer *v.* Bumstead, 99 Mass. 112; Comstock *v.* Hadlyme, 8 Conn. 261; Gardiner *v.* Gardiner, 34 N. Y. 155; Brick *v.* Brick, 66 N. Y. 144; Children's Aid Soc'y *v.* Loveridge, 70 N. Y. 387; Horn *v.* Pullman, 72 N. Y. 269; Kinne *v.* Johnson, 60 Barb. 69; Hazard *v.* Hefford, 2 Hun, 445; Snyder *v.* Sherman, 23 Hun, 139; Seguine *v.* Seguine, 4 Abb. (N. Y.) App. Dec. 191; Marvin *v.* Marvin, 3 *id.* 192; Burk's Will, 2 Redf. 239; Booth *v.* Kitchen, 3 Redf. 52; Lynch *v.* Clements, 24 N. J. Eq. 431; Browne *v.* Molliston, 3 Whart. 129; McMahon *v.* Ryan, 20 Penn. St. 329; Thompson *v.* Kyner, 65 Penn. St. 368; Tawney *v.* Long, 76 Penn. St. 106; Hopple's Est., 7 W. N. C. 523; Chandler *v.* Ferris, 1 Harr. (Del.) 454; Higgins *v.* Carlton, 28 Md. 115; Tyson *v.* Tyson, 37 Md. 567; Griffith *v.* Diffenderffer, 50 Md. 466; Monroe *v.* Barclay, 17 O. St. 302; Rabb *v.* Graham, 43 Ind. 1; Harrington *v.* Stees, 82 Ill. 50; Allmon *v.* Pigg, *id.* 149; Sechrest *v.* Edwards, 4 Metc. (Ky.) 163; Marshall *v.* Flinn, 4 Jones (N. C.) L. 199; Wright *v.* Howe, 7 Jones L. 412; Lee *v.* Lee, 71 N. C. 139; O'Neall *v.* Farr, 1 Rich. 80; Harrel *v.* Harrel, 1 Duv. 203; Thompson *v.* Davitte, 59 Ga. 472; Leverett *v.* Carlisle, 19 Ala. 80; Pool *v.* Pool, 35 Ala. 12; Leeper *v.* Taylor, 47 Ala. 221; Rogers *v.* Diamond, 13 Ark. 474; McDaniel *v.* Crosby, 19 Ark. 533; Tobin *r.* Jenkins, 29 Ark. 151; Williams *v.* Goude, 1 Hagg. 577; Parfitt *r.* Lawless, L. R. 2 P. & D. 462; Purdon *v.* Longford, L. R. 11 Ir. C. L. 269; Stultz *v.* Schaeffle, 18 Eng. L. & Eq. 576. And it must be connected with the document. Todd *v.* Fenton, 66 Ind. 25.

rally more or less influenced by those about him. Selfishness may lead them to attempt to influence him in their favor; or a feeling of chivalric generosity may induce those who are at home to unduly promote the interests of the absent. Rich men, also, are beset by numerous applicants for aid, some of whom are importunate, and often present their claims unfairly. If wills were set aside because such influences were applied, the privilege of testamentary disposition would be seriously impaired. The question is, therefore, not whether there were influences about the testator which, if not resisted, would unduly sway him, for there is no testator about whom there are no such influences; but whether the testator had capacity to resist such influences. If he had not, then the will, supposing the influences to have been applied, must fail at least *pro tanto*.[1]

Question is one of capacity to resist.

§ 80. Mere mental debility, caused by sickness or extreme old age, does not itself justify the conclusion that undue influence has been submitted to. "It is argued," said Mullin, J., in a case in New York, in 1862,[2] "that while a man's intellect may not be so weak as to render him incapable of making a will, yet it may be in that feeble state that he readily and easily becomes the victim of the improper influences of such unprincipled and designing persons as see fit to practise on him. The proposition is doubtless correct, but mere weakness does not prove undue influence. There must be some evidence of the influence, and of its improper exercise, to justify the rejection of a will on that ground."

Mental weakness does not prove undue influence.

[1] Glover *v.* Hayden, 4 Cush. 580; Baldwin *v.* Parker, 99 Mass. 79; Hunt *v.* Hunt, 116 Mass. 237; Davis *v.* Davis, 123 Mass. 590; May *v.* Bradlee, 127 Mass. 414; Wait *v.* Breeze, 18 Hun, 403; Hughes *v.* Murtha, 32 N. J. Eq. 288; Wainwright's App., 89 Penn. St. 220; Clark *v.* Stansbury, 49 Md. 346; Pierce *v.* Pierce, 38 Mich. 412; Hubbard *v.* Hubbard, 7 Oregon, 42.

[2] Reynolds *v.* Root, 62 Barb. 250, at p. 253; Eckert *v.* Flowry, 43 Penn. St. 46. Hence it must be shown that the undue influence took effect. See Jarman on Wills, Randolph & Talcott's note, 733, and cases there cited; Kinleside *v.* Harrison, 2 Phill. 449; Boyse *v.* Rossborough, 6 H. L. C. 47; Comstock *v.* Hadlyme, 8 Conn. 261; Rollwagen *v.* Rollwagen, 63 N. Y. 504: Brick *v.* Brick, 66 N. Y. 144; Eckert *v.* Flowry, 43 Penn. St. 46; Leverett *v.* Carlisle, 19 Ala. 80.

VI. PRESUMPTIONS.

1. *From act and surroundings.*

§ 81. It must be remembered that the justice of testamentary dispositions is to be determined from the testator's standpoint, not from the standpoint of the adjudicating tribunal. Provisions which may strike us as very unjust, may have seemed just to the testator, and might seem just to us if we were possessed of all the facts of which he was possessed. Notions of justice also vary as much as do the conceptions of facts to which these notions are applied. To one mind it may seem very unjust to give a preference to an older son; to another it would appear that daughters should be preferred, as the most helpless; to another, bequests to collateral relatives may seem a matter of duty; to another it may appear a matter of duty to give largely to educational and religious institutions. The law, in reserving to all sane persons the right of testamentary disposition, and in declining to establish a universal compulsory rule for the disposition of property after death, recognizes a variety of judgment among sane persons as to the way their property should be distributed. That a will is not the kind of will that the adjudicating tribunal would make, is therefore no reason for setting it aside. On the other hand, it is a sufficient reason for setting aside a will that it contains provisions whose monstrosity can only be explained on the hypothesis of insanity or of submission to undue influence.[1] In cases not of so extreme a type, inequality of disposition is not enough to warrant the setting aside of a will on the supposition of undue influence; there

Contents of will may indicate incapacity.

[1] See Parfitt *v.* Lawless, L. R. 2 P. & D. 462; Horn *v.* Pullman, 72 N. Y. 269; Cudney *v.* Cudney, 68 N. Y. 148; Booth *v.* Kitchen, 3 Redf. (N. Y.) 52; Higgins *v.* Carlton, 28 Md. 115; Kevil *v.* Kevil, 2 Bush, 614; Carpenter *v.* Calvert, 83 Ill. 62; Tingley *v.* Cowgill, 48 Mo. 290; Thomas *v.* Stump, 62 Mo. 275; Convey's Will, 52 Iowa, 197. But see Fulton *v.* Andrews, L. R. 7 H. L. Cas. 448. Courts may go too far in the endeavor to stand in the testator's place. That the testator's declarations are admissible to show the state of his mind, see 1 Redf. on Wills, ch. x. section iii. The following additional authorities may be referred to: May *v.* Bradlee, 127 Mass. 414; Canada's App., 47 Conn. 450; Griffith *v.* Diffenderffer, 50 Md. 466; Dennis *v.* Weekes, 51 Ga. 24; Lucas *v.* Carman, 13 Bush, 650; Reynolds *v.* Adams, 90 Ill. 134; Todd *v.* Fenton, 66 Ind. 25; Convey's Will, 52 Iowa, 197; Muller *v.* The Assoc., 5 Mo. App. 390; Mooney *v.* Olsen, 22 Kan. 69.

must be independent proof that such influence has been applied.[1] But always as one of the factors in determining a case,[2] the gross inequality of a will may be considered, and if undue influence be shown *aliunde*, the disinheritance of those entitled by nature to the testator's estate may be taken to be the effect of that influence.[3]

Inference from abuse of confidential relationship.

§ 82. It has been already noticed that a will will not be set aside simply because the testator was subjected to influence, even amounting to importunity, supposing that he had capacity to resist this influence, and was not the victim of coercion or fraud. If either coercion or fraud be shown, the will must fall.[4] And when a party claiming under a will is shown to have possessed, from confidential relations, undue influence over a testator, such party has the burden on him of showing, supposing that this influence was exerted for his own benefit, that he acted fairly, and that the testator acted freely. It is true that in a recent English case,[5] where a priest, the confessor and chaplain of the testatrix, was left all her property, and was made executor, Lord Penzance, upon a rule *nisi* for a new trial being argued, drew a distinction between the presumption in the case of gifts *inter vivos*, in favor of parties standing in a certain relation to the donor, and in the case of testamentary gifts in favor of the same parties. In the first case, the presumption, he held, is that these parties have used undue influence, and on them lies the burden of proof, while a stranger is not required to show that the donor was uninfluenced; while in the second case the presumption disappears against the parties standing in the confidential relation.

[1] Cudney *v.* Cudney, 68 N. Y. 148. But see Fulton *v.* Andrews, L. R. 7 H. L. C. 448, *contra*.

[2] Any circumstances may be considered which lead to the inference of undue influence. Barnes *v.* Barnes, 66 Me. 286; Marvin *v.* Marvin, 3 Abb. App. Dec. (N. Y.) 192; Rutherford *v.* Morris, 77 Ill. 397; Cadwallader *v.* West, 48 Mo. 483. But the circumstances must be such as to lead logically to that inference. Brick *v.* Brick, 66 N. Y. 144; Snyder *v.* Sherman, 23 Hun, 139. That any circumstances, however slight, will be admitted, see Clark *v.* Stansbury, 49 Md. 346; Mooney *v.* Olsen, 22 Kan. 69. And it is said that wherever suspicious circumstances, pointing to undue influence, exist, it is due to the parties to frame an issue for a jury. Reynolds *v.* Root, 62 Barb. 250.

[3] Clark *v.* Fisher, 1 Paige, 171.

[4] Bundy *v.* McKnight, 48 Ind. 502.

[5] Parfitt *v.* Lawless, L. R. 2 P. & D. 462.

"The natural influence," he said, "of the parent or guardian over the child, or the husband over the wife, or the attorney over the client, may lawfully be exerted to obtain a will or legacy, so long as the testator thoroughly understands what he is doing and is a free agent."[1] In such cases the party benefited, he held, must show, affirmatively, that the other party could have formed a free and intelligent judgment in the matter.[2] To the extent of allowing the wife,[3] husband, parent, or child to exert influence, the American cases approve of this ruling. To persons standing in these relations the estate of the testator should naturally descend, and so long as the testator's mind is sufficiently balanced to remember the condition of the family and the demands of all upon him, there is no rule of law to prevent the persuasion of relatives.[4] But in this country, gifts by will, as well as other gifts to guardians,[5] attorneys,[6] physicians,[7]

[1] Parfitt *v.* Lawless, *ut supra*, p. 470.

[2] See Jarman, by Randolph & Talcott, 144.

[3] *Supra*, § 77. Illicit cohabitation is not enough of itself to raise a presumption of undue influence. Rudy *v.* Ulrich, 69 Penn. St. 177; Wainwright's App., 89 Penn. St. 220. But it may be taken into consideration with other circumstances and produce undue influence. Dean *v.* Negley, 41 Penn. St. 317; Main *v.* Ryder, 84 Penn. St. 217; Kessinger *v.* Kessinger, 37 Ind. 341.

[4] The reliance of a mother upon a daughter for the management of her pecuniary and domestic affairs is no ground for imputation of fraud by the daughter. To imply fraud from filial virtue would be monstrous. Bleecker *v.* Lynch, 1 Bradf. 458. But it has been held that the relation of parent and child is proper to be taken into consideration by the jury. Gaither *v.* Gaither, 20 Ga. 709. The fact that the children who were present while the will was executed in the absence of the plaintiff were the principal beneficiaries cannot be held to raise a presumption of undue influence. Bundy *v.* McKnight, 48 Ind. 502. See Tingley *v.* Cowgill, 48 Mo. 291; Coit *v.* Patchen, 77 N. Y. 533.

[5] That such gifts are void, see Breed *v.* Pratt, 18 Pick. 115; Garvin *v.* Williams, 44 Mo. 465; Meek *v.* Perry, 36 Miss. 190; but that they only excite suspicion, Daniel *v.* Hill, 52 Ala. 430.

[6] St. Leger's App., 34 Conn. 450; Wilson *v.* Moran, 3 Bradf. 172; Boyd *v.* Boyd, 66 Penn. St. 283; Riddell *v.* Johnson, 26 Gratt. 152. *Sed contra*, Griffith *v.* Diffenderffer, 50 Md. 466, which follows Parfit *v.* Lawless. There is no presumption against an agent. Lee *v.* Lee, 71 N. C. 139. *Contra*, where the agent was principal devisee and wrote the will himself, Harvey *v.* Sullens, 46 Mo. 147. See Wright *v.* Howe, 7 Jones L. 412.

[7] Crispell *v.* Dubois, 4 Barb. 393; Colhoun *v.* Jones, 2 Redf. (N. Y.) 34; Cadwallader *v.* West, 48 Mo. 483. In England, prior to Lord Penzance's ruling, several cases disapproved of large bequests to medical advisers, and held that the burden of proof would be thrown on those to whom they

and spiritual advisers,[1] will be most carefully scrutinized by the courts, and will raise an inference of undue influence which it will be relevant to support by any pertinent corroborative evidence. And in general, when the executor of the will, or the party by whom it was written or suggested, is a devisee to a large extent, though not a relative, the onus will lie heavily upon him to maintain the will.[2] The presumption will, of course, depend upon the amount of the legacy. The result, then, of the cases, and the better view of the principles, may be taken to be as follows: No presumption of undue influence can be justly formed from the fact, by itself, that the testator has disinherited his relatives. But such inequality of distribution is an important factor in the case, and when it appears that the party to whom large benefits under the will are to go is one who, though not a relative, stood to the testator in a relation of trust and confidence, we are entitled to require proof that that confidence has not been abused. Stronger proof of fairness and of intelligent freedom on the part of the testator will be exacted when the beneficiary is a stranger in blood, than when he is a relative.[3] And in cases where the beneficiary is not a relative "stricter proof will be required of the testator's capacity, though not as to his knowledge of the contents of the will."[4]

Inference from contents not conclusive.

§ 83. We are therefore to conclude that the inference from the contents of a will, unless in those extreme cases in which the will itself is so preposterous as to exclude the hypothesis of sanity, is not by itself sufficient to determine the issue of *devisavit vel non*. At the same time a will making a just distribution of an estate will be held *per se* strong evidence of disposing capacity,[5] while one turning the testator's prop-

were given. 1 Jarm. Wills, 5th Am. ed., by Bigelow, *35–36, and notes. See the case of Audenried's App., 89 Penn. St. 114, reported 33 Am. Rep. 731.

[1] St. Leger's App., 34 Conn. 434. See Drake's App., 45 Conn. 9, and *supra*, § 77. For a case where a bequest to a hospital was avoided, see Muller *v.* The Assoc., 5 Mo. App. 390.

[2] Paske *v.* Ollatt, 2 Phill. 323; Durling *v.* Loveland, 2 Curt. 225; Newhouse *v.* Godwin, 17 Barb. 236; Lee *v.* Dill, 11 Abb. Pr. 214; Cuthbertson's App., Sup. Ct. of Pa. 1881, Central Law Journal, 1881, p. 352; Duffield *v.* Robeson, 2 Harr. (Del.) 384; Clark *v.* Stansbury, 49 Md. 346; Harvey *v.* Sullens, 46 Mo. 147.

[3] *Supra*, § 79.

[4] 1 Jarm. Wills, 5th Am. ed.; Bigelow, *35, Randolph & Talcott, p. 68.

[5] Nichols *v.* Binns, 1 Sw. & Tr. 239; Bannatyne *v.* Bannatyne, 2 Rob. 475;

erty into an unnatural channel affords, though not a direct presumption to the contrary, at least a circumstance of some suspicion, proper to be put before a jury in connection with other facts, as tending to determine the testator's capacity.[1] This is broadly stated by Sir John Nicholl, in a case[2] where he declares, that, where a will is traced into the hands of a testator whose sanity is fairly impeached, but of whose sanity or insanity at the time of doing or performing some act with relation to the will there is no direct evidence, the agent is to be inferred rational, or the contrary, from the character of the act.[3]

Unjust will not necessarily invalid.

§ 84. But, while the apparent injustice of a testator to members of his family is a circumstance to be taken into consideration in examining the question of his soundness of mind at the time of making a disposition of his property by will, it must not be forgotten that a man has a right by law to make whatever disposition of his property he chooses, however absurd or unjust.[4]

Thus, in a case in 1859 in New Jersey, an issue was raised as to the sanity of a testator at the time he made his will under which the defendants claimed title, and in his opinion Judge Whelpley said: "If he had capacity to make a will, that capacity was sufficient to enable him to make any will, no matter how unjust or unreasonable its provisions may seem to others. A testator has a right to make an unreasonable, unjust, injudicious will, and his neighbors have no right, sitting as a jury, to alter the disposition of his property, simply because they think he did not do justice to his family connections. Unless the will on its face carries clear

supra, § 21; Clarke *v.* Fisher, 1 Paige, 171; Thompson *v.* Kyner, 65 Penn. St. 368; Stevens *v.* Vancleve, 4 Wash. C. C. R. 262; Harris *v.* Betson, 28 N. J. Eq. 211; Young *v.* Barner, 27 Gratt. 96; Means *v.* Means, 5 Strobh. 167; Couch *v.* Couch, 7 Ala. 519; Elliott's Will, 3 J. J. Marsh. 340; Weir's Will, 9 Dana, 434.

[1] See *supra*, §§ 82–83. Roberts *v.* Trawick, 13 Ala. 68.

[2] Scruby *v.* Fordham, 1 Add. 90. This was a case where a party tore his will in half under circumstances strongly indicating insanity. The will was admitted to probate.

[3] See generally 1 Jarman on Wills (5th Am. ed.) chap. iii. and notes, and *supra*, § 61.

[4] Gamble *v.* Gamble, 39 Barb. 273. See also Trumbull *v.* Gibbons, 22 N. J. L. 117; Gleespin *in re*, 26 N. J. Eq. 323; Wintermute *v.* Wilson, 28 N. J. Eq. 437; Rutherford *v.* Morris, 77 Ill. 397; Higgins *v.* Carlton, 28 Md. 115; Coleman *v.* Robertson, 17 Ala. 84.

marks of being the product of a diseased mind, its injustice, its unreasonableness, ought not to be the foundation of a verdict against it."[1]

Disposing mind free to decide.

§ 85. Erskine, J., in the case of Harwood *v.* Baker,[2] where a will had been executed in favor of a second wife, to the exclusion of other relatives, the testator being in a state of weakened capacity, rendering him incapable of exertion unless roused, said: "Their lordships are of the opinion, that, in order to constitute a sound disposing mind, a testator must not only be able to understand that he has, by his will, given the whole of his property to one object of his regard, but he must also have capacity to comprehend the extent of his property, and the nature of the claims of others whom, by his will, he is excluding from all participation in that property, and that the protection of the law is in no cases more needed than it is in those where the mind has been too much enfeebled to comprehend more objects than one, and more especially when that object may be so forced upon the attention of the invalid as to shut out all others that might require consideration. And then—for the question which their lordships propose to decide in this case is, not whether Mr. Baker knew when he executed this will that he was giving all the property to his wife, and excluding all his other relations from any share in it, but whether he was at that time capable of recollecting who those relations were, of understanding their respective claims upon his regard and bounty, and deliberately forming an intelligent purpose of excluding them from any share of his property—if he had not the capacity required, the propriety of the disposition made by the will is a matter of no importance. If he had it, the injustice of the exclusion would not affect the validity of the disposition, though the justice or injustice of the disposition might cast down some light upon the question as to his capacity."

Eccentric clauses do not invalidate *per se*.

§ 86. Eccentric and even whimsical clauses in a will do not operate, *per se*, to annul it, the testator's capacity being otherwise indisputed. Thus, in England, and by Sir Herbert Jenner Fust, it was held to be not destructive of the hypothesis of sanity, that the testator should have directed that his executors should "cause some parts of his bowels

[1] Boylan *v.* Meeker, 4 Dutcher, 274. [2] 3 Moore P. C. 282.

to be converted into fiddle-strings—that others should be sublimed into smelling salts, and that the remainder of his body should be vitrified into lenses for optical purposes." The court, in admitting the will to probate, was governed by evidence that the testator had been marked by great business shrewdness, and that he was regarded by his associates as a man of indisputable capacity. His own explanation of this extraordinary provision, given in a letter attached to the will, was that "the world may think this to be done in a spirit of singularity or whim, but I have a mortal aversion to funeral pomp, and I wish my body to be converted into purposes useful to mankind."[1]

[1] Morgan *v.* Boys, Taylor, Med. Jur. 657, cited 1 Redfield on Wills, chap. xiv. § 11. Judge Redfield thinks that "this must be regarded as a most charitable view of the testator's mental capacity, and which an American jury would not readily be induced to adopt." See, also, Bird *v.* Bird, 2 Hagg. 142; Kinleside *v.* Harrison, 2 Phill. 449; Griffiths *v.* Robins, 3 Madd. 191; Horn *v.* Pullman, 72 N. Y. 269; Crolius *v.* Stark, 64 Barb. 112; Reynolds *v.* Root, 62 Barb. 250; Creely *v.* Ostrander, 3 Bradf. 107; Browne *v.* Malliston, 3 Whart. (Pa.) 129; Andress *v.* Weller, 3 N. J. Eq. 604; Sloan *v.* Maxwell, 3 N. J. Eq. 563; Higgins *v.* Carlton, 28 Md. 115; Kirkwood *v.* Gordon, 7 Rich. 474; Potts *v.* House, 6 Ga. 324. And see *supra*, § 44.

That mere eccentricity in a will is compatible with full testamentary capacity is illustrated by the fact that eccentric provisions are sometimes found in the wills of men whose sanity no one would doubt. Thus Mr. Hume, the historian, left in his will to his old friend Mr. John Home, of Kilduff (who disliked port, and used to contend that "Home" was the correct spelling both for his name and Hume's), "ten dozen of my old claret at his choice, and one single bottle of that other liquor called port. I also leave to him six dozen of port, provided that he attests under his hand, signed John Hume, that he has himself alone finished that bottle at two sittings. By this concession he will at once terminate the only two differences that ever arose between us concerning temporal affairs."

Jeremy Bentham gave directions in his will that his body should be embalmed and kept stuffed in a chair in one of his old apartments.

The London Illustrated News, in 1878, gave a series of articles on uncontested eccentric wills, among which may be noticed the following:—

Mr. Henry Budd, by his will, proved in February, 1862, declares "that in case my son Edward shall wear moustaches, then the devise hereinbefore contained in favor of him, his appointees, heirs, and assigns, of my said estate called Pepperpark, shall be void; and I devise the same estate to my son William, his appointees, heirs, and assigns. And in case my said son William shall wear moustaches, then the devise hereinbefore contained in favor of him, his appointees, heirs, and assigns, of my estate called Twickenham-park, shall be void, and I devise the said estate to my son Edward, his appointees, heirs, and assigns."

Mr. Fleming, an appraiser and upholsterer of Pimlico, by his will, proved

2. *From old age.*

Old age does not *per se* incapacitate.

§ 87. Testamentary incapacity does not necessarily presuppose the existence of insanity, in its technical sense. Weakness of intellect from extreme old age, whether arising from great bodily infirmity, or from intemperance, when

in April, 1869, gives to the different men in his employ 10*l.* each; "but to those who persist in wearing the moustache, 5*l.* only." Mr. James Robbins, whose will was proved in October, 1864, declared "that, in the event of my dear wife not complying with my request to wear a widow's cap after my decease, and in the event of her marrying again, that then and in both cases the annuity which shall be payable to her out of my estate shall be 20*l.* per annum, and not 30*l.*" Mr. Edward Concanen, in a will proved in May, 1868, says: "And I hereby bind my said wife that she do not after my decease offend artistic taste, or blazon the sacred feelings of her sweet and gentle nature, by the exhibition of a widow's cap." A very peculiar obligation was imposed on two of his legatees by Sir James South, the astronomer, whose will, with several codicils, was proved in 1868. By his will he gave a pocket chronometer each to the Earl of Shaftesbury, the Earl of Rosse, and Mr. Archibald John Stevens; and in one of his codicils he states they were so given to them in the fullest confidence that they would respectively use and wear them in the same manner as "I am in the habit of wearing my chronometer, namely, in my pantaloon pocket, properly so called"—a sort of premium to try and perpetuate the old fashion of carrying a watch in the fob pocket, in vogue when Sir James South was a young man.

The Countess Dowager of Sandwich, in her will, written by herself at the age of eighty, proved in November, 1862, expresses her "wish to be buried decently and quietly—no undertaker's frauds or cheating, no scarfs, hatbands, or nonsense." Mrs. Kitty Jenkyn Packe Reading, although evidently possessed of sufficient means, appears by her will, proved in April, 1870, to have been very anxious that one part at least of the expenses attending her funeral should be kept as low as possible. After saying she is to be placed first in a leaden and then in a wooden coffin, she provides that "if I die away from Branksome, I wish my remains, after being duly placed in the proper coffins, to be inclosed in a plain deal box so that no one may know the contents, and conveyed by a goods train to Poole, which will cost no more than any other package of the same weight; from Poole station said box to be conveyed in a cart to Branksome Tower." Mr. William Kensett, by his will, proved in October, 1855, recites that, "believing in the impolicy of interring the dead amid the living, and as an example to others, I give my body, four days after death, to the directors of the Imperial Gas Company, London, to be placed in one of their retorts and consumed to ashes, and that they will be paid £10 by my executors for the trouble this act will impose on them in so doing. Should a defence of fanaticism and superstition prevent their granting this, my request, then my executors must submit to have my remains buried, in the plainest manner possible, in my family grave at St. John's-wood Cemetery, to assist in poisoning the living in that neighborhood."

it disqualifies the testator from knowing or appreciating the nature, effect, or consequences of the act he is engaged in, works a similar disability.[1] Great caution, indeed, should be used, lest the existence of extreme old age should lead the medical witness to presume consequent imbecility. Against such a sequence the policy of the law and the interests of humanity unite in protesting. "It is one of the painful consequences of extreme old age," beautifully said Chancellor Kent, in one of his earlier judgments, "that it ceases to excite interest, and is apt to be left solitary and neglected. The control which the law still gives to a man over the disposal of his property, is one of the most efficient means which he has in protracted life to command the attention due his infirmities. The will of such an aged man ought to be regarded with great tenderness, when it appears not to have been procured by fraudulent acts, but contains those very dispositions which the circumstances of his situation and the course of the natural affections dictated."[2]

§ 88. "Great age, alone," adds a very enlightened and humane jurist, Judge Bradford, "does not constitute testamentary disqualification; but, on the contrary, it calls for protection and aid to further its wishes, when a mind capable of acting rationally, and a memory sufficient in essentials, are shown to have existed, and the last will is in consonance with definite and long-settled intentions, is not unreasonable in its provisions, and has been executed with fairness."[3] Nor, was it ruled by the same learned judge, does loss of memory incapacitate, unless it be total, or appertains to things essential.[4]

Should rather be protected.

In connection with these passages, the remarks of Lord Cockburn, C. J., in the case of Banks *v.* Goodfellow,[5] are worthy of attention. "In these cases," he says, "it is admitted on all hands that though mental power may be reduced below the ordinary standard, yet, if there be sufficient intelligence to understand and appreciate the testamentary act in its different bearings, the power to make a will remains. It is enough if, to use the words of Sir Edward Williams,

[1] Leech *v.* Leech, 21 Penn. St. 67. See in this connection Dr. Day's "Practical Treatise on the Domestic Management of the Most Important Diseases of Advanced Life." T. & W. Boome, London, 1849.

[2] Van Alst *v.* Hunter, 5 Johns. Ch. 148. See *post*, § 104.

[3] Maverick *v.* Reynolds, 2 Bradf. 360.

[4] Bleecker *v.* Lynch, 1 Bradf. 360.

[5] L. R. 5 Q. B. 549.

in his work on 'Executors,' 'the mental faculties retain sufficient strength fully to comprehend the testamentary act about to be done.' 'Non sani tantum,' says Voet, in his 'Commentary on the Pandects,' founding himself on the language of the code, 'sed et in agone mortis positi, seminece ac balbutiente linguâ voluntatem promentes, recte testamentas condunt, si modo mente adhuc valeant.'"

So of partial loss of faculties.

§ 89. In harmony with these views, wills have been sustained when the testator was eighty years of age, very deaf, and partially blind;[1] where he was of the same age, and was afflicted with a palsy, so that he could neither write nor feed himself;[2] and when he was between ninety and a hundred, and greatly debilitated.[3] It is true that when in old age the testator is shown to have been imposed upon or coerced, the will will be set aside; but this rather tends to strengthen than invade the sanctity of the testamentary privilege.[4]

And bodily infirmities.

§ 90. The same view is to be taken of the bodily infirmities peculiar to old age. If they produce mental impotence, of course they work incapacity.[5] But their mere existence will not be sufficient to produce this result.[6] As long as

[1] Lowe *v.* Williamson, 2 N. J. Eq. 82.

[2] Reed's Will, 2 B. Mon. 79.

[3] Van Alst *v.* Hunter, 5 Johns. Ch. 148. See Collins *v.* Townley, 21 N. J. Eq. 353.

[4] 1 Jarm. on Wills (5th Am. ed.), chap. iii.

[5] Harvey *v.* Sullens, 46 Mo. 147.

[6] Vanauken *ex parte*, 10 N. J. Eq. 186. Thus, mere impairment of intellect is not unsoundness of mind. Den *v.* Johnson, 4 N. J. L. 454; Collins *v.* Townley, 21 N. J. Eq. 353; Wintermute *v.* Wilson, 28 N. J. Eq. 437; Jamison *v.* Jamison, 3 Houst. (Del.) 108; Watson *v.* Watson, 2 B. Mon. 74; Reed's Will, 2 B. Mon. 79; Rutherford *v.* Morris, 77 Ill. 397. Nor is failure of memory, Reynolds *v.* Root, 62 Barb. 250; Eddy's case, 32 N. J. Eq. 701; Lowder *v.* Lowder, 58 Ind. 538; though attended by slight delusions, Children's Aid. Soc. *v.* Loveridge, 70 N. Y. 387. But old age and sickness are proper circumstances to be considered in determining capacity, Willemin *v.* Dunn, 93 Ill. 511; and when a grantor is in such a condition, and is ignorant, it is the duty of the officer authenticating the execution of his deed to explain its contents to him, Lyons *v.* Van Riper, 28 N. J. Eq. 437. Where such was the condition of a testator, it has been held that it must be affirmatively shown that he knew the contents of the will, Wisener *v.* Maupin, 58 Tenn. 342; and it has been held that the burden is on those propounding the will of an aged person who is of impaired mind and body. Phipps *v.* Van Kleeck, 22 Hun, 541; Ames' Will, 51 Iowa, 596. See Shakespeare *v.* Markham, 72 N. Y. 400. No person ought to subscribe as witness to a will unless he knows from the testator himself that he understands what he is doing. Scribner *v.* Crane, 2 Paige, 147, Walworth, C. A will has been set aside in submission to the opinions of

it can be done consistently with public justice, the policy of the law requires that the protection to old age, afforded by the right of testamentary disposal, should continue unimpaired; and it is permitted to cease only when actual wrong would be done to third parties by its continuance, or where by exposing the possessor to undue solicitation or to imposition, it proves an annoyance rather than an advantage. Nor is this rule without its foundation in the results of observation. The truth that the mind is not necessarily affected by bodily infirmity, is illustrated by numerous cases, one of the most striking of which is that of Dugald Stewart, who, when unable from disease to take general exercise, to use his right hand, or to articulate distinctly, composed the third and fourth volumes of his Philosophy of the Human Mind.

§ 91. In a case in 1869 in Illinois, where a bill was filed to set aside a deed made by a man eighty-seven years old to his son, on the ground of mental imbecility, the court held that in order to entitle the plaintiffs to the relief sought, they must show such a degree of mental weakness as to render the party incapable of understanding and protecting his own interests. The circumstance that the mental powers have been somewhat impaired by age is not sufficient, if the contracting party still retains a full comprehension of the meaning, design, and effect of his acts.[1]

Mental weakness must be shown to incapacitate.

§ 92. In an English case reported by Mr. Browne,[2] the evidence was that Andrew Harrison made a will and several codicils; the will and the first four codicils were not opposed, the other codicils were contested. The contested codicils were set up by Mr. Kinleside, who was one of the executors and the residuary legatee named in the will, and they were opposed by Mr. Benjamin Harrison, whose appointment as an executor and the benefits he derived under the will were revoked by these codicils. All these instruments were regularly executed, and the grounds of opposition were, that the deceased labored under dementia (mental

So in England.

the subscribing witnesses and the fact that some time after the testator forgot his children. Dumond *v.* Kiff, 7 Lans. (N. Y.) 465. See, generally, 1 Jarm. on Wills, 5th Am. ed., chap. iii.; 1 Redf. Wills, chap. iii. section xii.

[1] Lindsey *v.* Lindsey, 50 Ill. 79.

[2] Kinleside *v.* Harrison, 2 Phill. 449. See Browne's Med. Jur., London, 1871, p. 212.

imbecility), so as to be incapable of any testamentary act whatever; and with regard to two of the codicils, it was asserted that they were obtained from the deceased by fraud, circumvention, and importunity.

It was proved that the testator was eighty-six or eighty-eight when the contested codicils were made. It was also proved that the deceased was liable to certain nervous attacks, and it was admitted that during these attacks he was incapable of any rational act. The deceased was admitted to be deaf, to be nervous and low-spirited when anything affected him. His eyesight was perfect, his bodily powers were not much impaired. It was proved that he could run up stairs. These points were not controverted.

Thirteen witnesses were examined to prove the incapacity of the testator. Most of them spoke of a failure of memory, of a defective power of recognizing people, of his being regarded by those about him as a person of weak mind, and of his appearing to be "lost." But their evidence brought out the fact that he was in many ways vigorous in mind and body, and that he was able to transact business without assistance. They were strongly of opinion that the testator was of unsound mind, and incapable at the time the contested codicils were made of making a valid testamentary instrument.

The evidence of Mr. Boodle, the solicitor, who was concerned in the execution of the codicils, was that at the time of their execution Mr. Boodle, although he thought the deceased's memory defective, did not regard him as permanently incapable; and, when taken in connection with the evidence of other witnesses, led to the conclusion that the testator did not labor under such mental defect as to render him incapable of a valid testamentary act. It was satisfactorily proved that he was able to settle bills, to draw his own drafts, to write letters, to play cards, to go about by himself, and that he comprehended the state of his affairs; and many of the witnesses summoned in support of the codicils asserted that they regarded him as a person of sound mind, whose memory and understanding were unimpaired.

With regard to this part of the case the learned judge says: "Now, these accounts, with the bills regularly paid and indorsed, these drafts drawn, these counterchecks registered and marked with the date and sum for which they were drawn, the corresponding entries in the book of expenditure, prove mind and understanding, and

thought, judgment, and reflection very strongly, and, in a person of his great age, of a most extraordinary and unusual degree. . . . . It is proved to my satisfaction that he possessed his mental faculties in an extraordinary degree, considering his great age, and that he had a testamentary capacity quite equal to a testamentary act of no very complicated nature."

Excessive failure of memory invalidates.

§ 93. Sir J. Wilde (now Lord Penzance), in pronouncing judgment in the case of West *v.* Sylvester, against a will propounded as that of an aged lady, said, "At the time she executed the will of October, 1863, although for many purposes she might be said to be in her right senses, she was, nevertheless, suffering from that failure and decrepitude of memory which prevented her having present to her mind the proper objects of her bounty, and selecting those she wished to partake of it." On this ground the will was set aside.

And senile dread of relatives.

§ 94. It is also to be observed that a party in extreme old age may fall under the subjection of relatives or attendants to such an extent as to deprive him of freedom of volition. His mind "may be quite intelligent, his understanding of business clear, his competency to converse upon and transact business undoubted, and his bodily strength good; but there may grow upon him a fear and dread of relatives or servants who may have surrounded him, and on whom he may have become so perfectly dependent that his nervous system is wholly overcome, so that he has no power to exert his mind in opposition to their wishes, or to resist their importunities. His mind is enslaved by his fear and a feeling of helplessness, so that, to that extent, and in matters in which he may be moved by them, he really is facile and imbicile. This state of things seems to be easily brought on in old age, when the faculties are otherwise entire, and the bodily strength considerable."[1]

3. *From physical causes.*

[*See this question viewed psychologically, infra*, §§ 461–469.]

§ 95. In cases of blindness, or of deaf-and-dumbness, the party offering a will has the burden of proving that the testator knew the

[1] See Taylor's Med. Jur. 2d ed. (1873), ii. 558.

Competency exists in cases of deaf-mutes, but knowledge of instrument must be shown.

contents of the will, and was not imposed upon.[1] It has been questioned whether a person who was both blind and deaf and dumb, is competent to execute any instrument requiring consideration,[2] though, as will be seen,[3] this cannot now be considered to be the law, when to that unfortunate class methods of communication have been opened which may fit them to sustain and appreciate the relations of society.

Question depends on education.

§ 96. "We regard this class of persons," says Judge Redfield, in his excellent treatise on wills,[4] "as standing precisely like all others in that respect (testamentary capacity), with this difference, perhaps, that, where it appears that the testator was a deaf-mute, it will impose upon those who claim to establish the will the burden of showing, in the first instance, that the testator made the instrument understandingly." But even this qualification, the same learned author seems to think, vanishes, "in the case of educated mutes, who are capable of communicating by writing." "The fact that the testator wrote the will might fairly be regarded as sufficient evidence, *primâ facie* at least, that he made it understandingly." And the deaf and dumb testator may communicate his intention to execute by signs,[5] or by writing.[6] Whatever may once have been thought, it is now clear that even a concurrence of blindness with deafness and dumbness, necessarily works no incapacity.[7]

The question depends upon the education of the party afflicted with this calamity. Under recent improved culture deaf-mutes

[1] 1 Jarm. Wills, 5th Am. ed. ch. iii.

[2] Ibid.

[3] *Infra*, § 96.

[4] I. ch. iii. § 5.

[5] Owston *in re*, 2 Sw. & Tr. 461; Geale *in re*, 3 Sw. & Tr. 431.

[6] Moore *v.* Moore, 2 Bradf. 265. See Christmas *v.* Mitchell, 3 Ired. Ch. 535.

[7] Weir *v.* Fitzgerald, 2 Bradf. 42. See Oliver *v.* Berry, 53 Me. 206; Reynolds *v.* Reynolds, 1 Spear, 253. But, as with deaf-mutes, it must be shown that the testator understood the contents of the will; *à fortiori*, when he is blind, deaf, and dumb. See Harrison *v.* Rowan, 3 Wash. C. C. R. 580; Lewis *v.* Lewis, 6 S. & R. (Pa.) 489; Day *v.* Day, 3 N. J. Eq. 444; Davis *v.* Rogers, 1 Houst. (Del.) 44; Wampler *v.* Wampler, 9 Md. 540; Clifton *v.* Murray, 7 Ga. 564; Martin *v.* Mitchell, 28 Ga. 382; Ray *v.* Hill, 3 Strobh. 297; Guthrie *v.* Price, 23 Ark. 396; Barton *v.* Robins, 3 Phill. 455; Longchamp *v.* Fish, 2 Bos. & Pul. N. R. 415; Edwards *v.* Fincham, 3 Curt. 63; Mitchell *v.* Thomas, 6 Moore P. C. C. 137.

are enabled to receive instruction freely, and freely to communicate their views; and, when this is the case, their testamentary capacity cannot be questioned on the ground that they are deaf-mutes.[1]

Deaf-mutes may marry when *compos mentis.*

§ 97. If *compos mentis*, deaf and dumb persons can contract matrimony.[2]

Question is one for jury.

§ 98. Whether a deaf-and-dumb person is *capax negotii* is, under the instruction of the court, a question to be determined by the conditions of the concrete case.[3]

[1] The earlier cases will be found in a learned essay by Dr. H. P. Peet, in the 13th vol. of the Am. Journ. of Insanity. See Oliver *v.* Berry, 53 Me. 206.

[2] Swinburne on Spousals, cited 13 Am. Journ. Insan. 127.

[3] As to pleading, see R. *v.* Pritchard, 7 C. & P. 303; R. *v.* Whitfield, 3 C. & K. 121; Wh Cr. Pl. & Pr. § 417; and see Ordronaux Jud. Aspects of Insan. 225. For other points in this connection see *supra*, § 461.

CHAPTER III.

COMMISSIONS OF LUNACY.

Process to determine lunacy by a commission, § 99.
General manner of issuing, § 100.
Issue before a commission is general incompetency, § 101.
Opinions of witnesses admissible, § 102.
Ability to manage business the test of competency, § 103.
But mere old age does not incapacitate, § 104.
Harmless lunatic confined when necessary, § 104 *a*.
What constitutes habitual drunkard, § 105.
Extravagance and profligacy need not constitute incompetency, § 106.
Proceedings may be set aside if irregular or inequitable, § 107.

Process to determine lunacy by a commission.

§ 99. In most of the United States, as in England, process exists by which, when a party is incapable of the management of his estate, whether from mental unsoundness or from habitual drunkenness, a committee may be appointed to whom the custody of his property is committed. It would be out of place to set forth here the statutes by which this process is defined and settled; it is enough now to notice the general scheme of practice which exists in England, and which has been, with the exceptions of only slight alterations of detail, adopted in this country.[1]

General manner of issuing.

§ 100. When there is reason to believe that a party, from unsoundness of mind or habitual drunkenness, is incapable of managing his affairs, a petition lies, generally from any person interested in his person or estate, for the issuing of a commission.[2] Upon the reception of the

[1] See Ordronaux's Judic. Aspects of Insan. (1877) 2 *et seq.*

[2] The petition must be sustained by affidavits. Persse *ex parte*, 1 Moll. 219; Lincoln *ex parte*, 1 Brewst. 392. For an interesting case where an East Indian, temporarily insane in New York, was sent home to his family under the charge of a committee, the court having refused to entrust him to the care of his father-in-law, who came from India to seek him, see Colah *in re*, 3 Daly, 529; S. C., 11 Abb. Pr. N. S. 209. The court rested the inherent

petition, the court directs a commission to issue to one or more persons—generally required to be learned in the law—directing the inquiry by commissioner and jury, as to the facts of the petition. The commissioner, being thus authorized, directs a precept to the sheriff, commanding him to summon a jury, who, when they meet, hear testimony—on both sides if desired—on the matter submitted to them, and, after being charged by the commissioner as to the law of the case, return a finding as to whether, from the lunacy or habitual drunkenness complained of, the respondent is incapable of managing his estate.[1] Should the finding be in the affirmative, the court will appoint a committee, who will take charge of the respondent's estate,[2] subject, however, to the absolute right[3] of the respondent to traverse the finding, *i. e.*, to put in a formal denial of it, in which case the question is determined before a court and jury, in the same way as any other contested fact. Whether the alleged lunatic really is capable of volition as to a traverse, and desires that a traverse should be entered, will be determined, it seems, by the chancellor himself, by personal examination or otherwise.[4]

§ 101. It will be seen that the point at issue under a commission of lunacy or habitual drunkenness, is the *general*, and not the *partial* or *particular*, incompetency of the party, who is the subject of the inquiry.[5] It is a matter of some moment, also, that the fullest opportunity of exami-

Issue before a commission is general incompetency.

jurisdiction of the state over lunatics and persons of unsound mind within its limits, whether citizens or aliens, on two grounds: *First*, the duty to protect the community from the acts of those who are not under the guidance of reason; and, *secondly*, its duty to protect them as a class incapable of protecting themselves, which duty has its foundation in the reciprocal obligation of allegiance and protection, and which extends to aliens and strangers who owe a temporary and local allegiance. That the petition is necessary to jurisdiction, see Payn *in re*, 8 How. Pr. 220; Mason *in re*, 1 Barb. 436.

[1] Personal service on the alleged lunatic is always necessary. Dozier, *in re*, 4 Baxt. (Tenn.) 81. Subsequent proceedings, in the absence of this, would be void. Moody *v.* Bibb, 50 Ala. 245; Molton *v.* Henderson, 62 Ala. 426.

[2] The New York practice is given in Ordronaux's Judic. Aspects of Insan. (1877) 14. See, as to the practice in regard to the appointment and removal of committees, Black's Est., 18 Penn. St. 434; Hulings *v.* Laird, 21 Penn. St. 265.

[3] Cumming *in re*, 11 Eng. L. & Eq. 202; 1 De G. M. & G. 537.

[4] Ibid.

[5] Watson's Interdiction, 31 La. Ann. 757.

nation be given. When a particular instrument is sought to be vacated, or a particular crime to be excused, the testimony of the medical witness is necessarily drawn from but casual observation, made in some cases at a time when he had no reason to suspect the existence of the disease. In such cases, also, great incentives to fraud exist;[1] and it is well known how acute must be the penetration, and how sharp the tests which are not sometimes baffled by the simulation of mental unsoundness. On the other hand, a commission of lunacy is executed with deliberation, after a calm and full review of the previous life of the party under consideration. Nor is he likely, as in criminal defences, to obtain a verdict of insanity through undue sympathy, for his interests and his pride are both enlisted in resisting his moral and intellectual disfranchisement. It becomes, therefore, a simple test, Is the respondent prevented by mental unsoundness or habitual drunkenness from managing his own estate?[2] If he is, no matter how responsible he may be for crime, or capable at particular times of making a bargain, the finding must be against him.

Upon a recovery of competency, the commission, on due cause shown, will be superseded.[3]

[1] In actions for the interdiction of a party for insanity, investigation of the motives of those who are provoking the interdiction is of the utmost consequence. Francke *v.* His Wife, 29 La. Ann. 302.

[2] Titcomb *v.* Vantyle, 84 Ill. 371; Jacox *v.* Jacox, 40 Mich. 473; Fentress *v.* Fentress, 7 Heisk. (Tenn.) 428; Gray *v.* Obear, 59 Ga. 675.

[3] See Lackey *v.* Lackey, 8 B. Mon. 107; Russel *in re*, 1 Barb. Ch. 38; Lasher *in re*, 2 Barb. Ch. 97; Mason *in re*, 1 Barb. 436; Beaumont's case, 1 Whart. 52.

Prof. Ordronaux, in his treatise on the Judicial Aspects of Insanity (N. Y., 1877), 229, shows satisfactorily the processes by which English chancellors gradually reached the conclusion that the test is business capacity. "Thus in Gibson *v.* Jeyes, 6 Ves. Jr. 266 *a*, at p. 272, which was a case of imbecility, Lord Eldon observed that it was a question 'whether this case might not support a commission, not of lunacy, but in the nature of a writ *de lunatico*, in which, it must be remembered, it is not necessary to establish lunacy, but it is sufficient that the party is incapable of managing his own affairs.' And in another similar case this same high authority said that 'a commission of lunacy' is not confined to strict insanity, but is applied to cases of imbecility of mind, to the extent of incapacity from any cause, as disease, age, or habitual intoxication. Ridgeway *v.* Darwin, 8 Ves. Jr. 65.

"Lord Erskine in *ex parte* Cranmer, 12 Ves. Jr. 445, reiterated the views expressed by Lord Eldon, and held that a commission of lunacy was applicable to incapacity from causes distinct from

§ 102. Opinions of witnesses as to the party's capacity are as admissible as in other cases of contested sanity.[1]

Opinions of witnesses admissible.

lunacy. It will be evident from these rulings how strongly the tide had turned since Lord Hardwicke in *ex parte* Barnsley, 3 Atk. 169, A. D. 1744, decided that, although there might be mental incapacity in a party, still no return to the inquisition would be good which did not find the party of unsound mind. And the ground upon which he rested this ruling was, that while he was desirous of maintaining the prerogative of the crown in its just and proper limits, yet, at the same time, he must take care not to make a precedent of extending the authority of the crown, so as to restrain the liberty of the subject and his power over his own person and estate, further than the law would allow.

"In our own state, Chancellor Kent gave an early assent to the doctrine announced in the English decisions, and on a similar question coming before him, in the case of Barker, 2 Johns. Ch. 233, gave his entire approbation to the course pursued by Lords Eldon and Erskine. Barker was not a lunatic, nor yet an idiot, but a feeble-minded old man, incapacitated by advanced age for the management of his own affairs. A commission was accordingly issued and a finding of unsound mind returned. In referring to the duty of courts of equity to issue commissions in the nature of writs *de lunatico*, wherever there was a reasonable doubt of a party's capacity to manage his own affairs, the chancellor, while reviewing the English authorities, said:—

"Lord Hardwicke disclaimed any jurisdiction over the case of mere weakness of mind, yet it is certain that when a person becomes mentally disabled, from whatever cause the disability may arise, whether from sickness, vice, casualty, or old age, he is equally a fit and necessary object of guardianship and protection. The court of chancery is the constitutional and appropriate tribunal to take care of those who are incompetent to take care of themselves. There would be a deplorable failure of justice without such a power. The object is protection to the helpless, and the imbecility of extreme old age, when the powers of memory and judgment have become extinct, seems, as much as the helplessness of infancy, to be within the reason and necessity of the trust.

"And proceeding further to justify the issuing of commissions in cases of general mental incapacity without the presence of actual insanity, he observed: 'It is evident that Barker is not a lunatic, within the legal meaning of the term. He is not a person who sometimes has understanding and sometimes not. He is, rather, of that class described by Lord Coke as *non compos mentis*.' Co. Litt. 246 b.

"An inquisition may, therefore, be awarded for any cause which substantially incapacitates a party to manage his affairs. It matters not, therefore, whether the party be reduced to this condition by disease, or old age, or habitual intoxication. *Ex parte* Tracy, 1 Paige, 580.

"Any thing which reduces the mental capacity of an individual to such a degree as to permanently unfit him to comprehend the nature and necessities of his own affairs, to take in the position which those affairs occupy to others,

[1] See Wh. on Ev. § 451; Winslow on Med. Leg. Ev. in Insan. 129.

§ 103. In a trial in 1868, in Pennsylvania, proceedings were commenced by the commonwealth to inquire whether Elizabeth

and the provision necessary to be made to secure himself against the ordinary risks and contingencies of business, may be said to render him, in contemplation of law, unfit to manage his affairs. Although not properly a lunatic, he is still in the eye of the law *non compos mentis*, and a proper subject for an inquisition of lunacy.

"However probable may be the existence of the fact of lunacy, it must still be sufficiently well substantiated to satisfy the judgment of the court to which application for a commission is made, since the court cannot act on conjecture alone. Therefore, in Sherwood *v.* Sanderson, 19 Ves. 286, Lord Eldon observed that 'before a commission issues, the duty of that person who has authority to issue it requires him to have evidence that the object of the commission is of unsound mind and incapable of managing his affairs, and for that purpose the evidence of medical men is generally produced.'

"But it is not every case of mental weakness or imbecility which will authorize a court of equity to exercise the power of appointing a committee of the person and estate. In order to justify the exercise of such a power, it has been held that the mind of the individual must be so far impaired as to be reduced to a state which, as an original incapacity, would have constituted a case of idiocy. Matter of Morgan, 7 Paige, 236; Matter of Shaul, 40 How. Pr. 204. Although there certainly are degrees in idiocy, it is doubtful whether the standard thus selected, as popularly understood, is not a lower one than courts could generally or even safely adopt in exercising guardianship over the feeble-minded. Every day furnishes evidence of the existence of certain minds which, far above idiocy in intensity and extensity of power, are yet shown by experience to be incapable of governing themselves or managing their affairs. Without being idiots, they are still capable of being included among the *non compos* class. It was to this feeble class that Lord Hardwicke referred, when he observed that it might be well if a curator or tutor should be set over prodigal and weak persons, as in the civil law. *Ex parte* Barnsley, 3 Atk. 169."

See, to same effect, Nailor *v.* Nailor, 4 Dana, 339; Shaw *v.* Dixon, 6 Bush, 644. It is competent, under the statutes, to appoint a conservator for the estate of an insane married woman, and, upon proper showing, to decree a sale and conveyance of her estate, although, when the statutes were passed, the common law governing the rights of married women obtained in the state. Conveyances by conservators are conveyances made by the law for the benefit of the lunatic, and are analogous to conveyances by guardians and administrators, and are in no sense to be regarded as conveyances by the lunatic. Where the court had jurisdiction to decree such a sale, a proper petition was filed, and all the parties in interest were before the court, whether the court judged correctly in regard to the property in question being the kind or class of property of which a sale should be decreed, or in regard to the necessity of a sale, cannot be inquired into in a collateral proceeding. Gardner *v.* Maroney, 95 Ill. 552.

That the court will issue a commission on a *primâ facie* case, see Tomlinson *ex parte*, 1 Ves. & Beav. 57.

The procedure must be conducted under the same sanction as other judi-

Schneider was a lunatic, etc. The inquisition finding the respondent a lunatic was confirmed by the court. Ability to manage business

cial investigations. Lincoln *ex parte*, 1 Brewst. 392; Pettit *ex parte*, 2 Paige, 174; Russell *ex parte*, 1 Barb. Ch. 38. The commissioners may compel the production of the lunatic before them for their inspection and that of the jury, if deemed desirable, and this, in all cases wherever possible, should be done. 2 Barb. Ch. Pr. 233; Russell *ex parte*, 1 Barb. Ch. 38. Should any custodian of the lunatic or other person interpose to prevent this inspection, he may be punished for contempt. This was done in Lord Wenman's case, where Lady Wenman, who was an Irish peeress, and had charge of her husband, was committed for contempt for not producing him when required (1 P. Wms. 701). If the persons having charge of the lunatic carry him out of the state, the commission may still be executed in his absence. See Ordronaux, *ux supra*.

It is the duty of the sheriff alone to select and to summon the jurors, and it is both improper and irregular for the commissioners to dictate what persons are to be summoned. Wager *ex parte*, 6 Paige, 11.

"In conducting the trial it is usual for the person first named upon the commission to act as president; to administer the oath to the jury; to read and explain the commission to them; to swear and examine the witnesses, who must testify both as to the lunacy of the party, his next of kin, and the value of his real and personal property. And some one of the commissioners should also charge and instruct the jury as to the matters to be found by them in their verdict. 2 Barb. Ch. Pr. 233." Ordronaux, *ut supra*.

In Arnhout *in re*, 1 Paige, 497, Chancellor Walworth, in directing the manner in which the jury should be charged, says, "but without argument of counsel on either side." On this Prof. Ordronaux makes the following just criticism. "Now, since it was always a settled rule of practice in our court of chancery, that any party against whom a commission of lunacy was awarded could be represented by counsel (1 Moulton's Ch. Pr. 110), we know of no principle of law which would authorize the commissioners to refuse permission to such counsel to address the jury. For it might become a very essential part of his duty to enlighten the jury upon the value or significance of the evidence introduced, and we do not well see how, without great injustice to the parties interested, any counsel could legally be restricted to the examination of witnesses alone. Such a restriction has certainly never existed in England, and the question, therefore, has never called for special adjudication. Nor if raised before any of our courts do we believe it would receive any countenance."

In Arnhout *in re*, 1 Paige, 497, Chancellor Walworth laid down the following additional rules, viz.: The jury are to be instructed that, if twelve or more of them find that the party is not incompetent, they are to deliver their verdict accordingly, or if the same number decide against his competency, that they then find and determine the other facts directed to be inquired of, and that if twelve of them cannot agree either way, they report the facts to the commissioners in order that their return be made accordingly. And in relation to every legal question arising in the execution of the commission, a majority of the commissioners must decide. Ordronaux, *ut supra*

the test of competency.

The respondent traversed the finding. On the trial the court of common pleas charged (*inter alia*), "Until the mind is entirely blotted out, persons must be left to the management of their own affairs. As long as there is a spark of intelligence left, the law does not permit their liberty to manage themselves or property to be taken from them." A writ of error was taken out, which assigned for error the portion of the charge just quoted. In the supreme court, the opinion was delivered by C. J. Thompson, who said: "The truth and practical test under this proceeding is this—Utter and unmitigated madness, or absolute and hopeless idiocy, resulting from cerebral injury or disease, or want of intellect from nativity, are by no means the only tests. The protection of property is one, if not the main object of the statute; it is practical, that the test of liability to a commission, should depend greatly on that unsoundness of mind which discloses incompetency to its management, and the care and protection of it in a rational manner; and this is the rule in England." He then cited English authority to sustain him, and said: "The learned judge fell into an error, by following the lead of Beaumont's case, 1 Wharton, 52, which seems mainly to have rested on Barnsley's case, 3 Atk. 168, which we have seen Lord Eldon refused to follow in Ridgway *v.* Darwin."[1]

But mere old age does not incapacitate.

§ 104. A petition for a commission *de lunatico inquirendo* was presented by the son of Sarah Collins, in 1867, to the chancellor of New Jersey, applying for a commission to take charge of his mother's person and estate. She was in the hundredth year of her age, her hearing was somewhat impaired, and her sight very much so. The weight of the medical testimony, however, was in favor of her soundness of mind. The court held that there was no presumption against her soundness from her extreme age. "She may," says the chancellor, "be so weak and infirm as to be easily influenced, or imposed upon, which would be a reason for setting aside any instruments or transactions executed under the effect of such influence, but this does not amount to unsoundness such as to take from her the control of herself and her property."[2]

[1] Com. *v.* Schneider, 59 Penn. St. 328; S. P. Watson's Interdiction, 31 La. Ann. 757.

[2] Collins *in re*, 18 N. J. Eq. 253. See *ante*, § 87.

§ 104*a*. In a case which attracted much popular attention at the time,[1] Chief Baron Pollock declared, that "no person ought to be confined in a lunatic asylum unless dangerous to himself and others." This *dictum*, which startled both the legal and the medical professions at its utterance, has been combated, and with great ability, by very eminent psychological authority,[2] and has not been followed by the current of American judicial opinion. There are necessarily cases when the safety of property and the health of the patient himself, require confinement in an asylum, though there be no danger of violence to himself and others, and it is not likely that the existence of such cases will be again judicially questioned. Whether the confinement, in any particular case, was proper or not, will be for the court and jury, if an action of false imprisonment be brought, to determine specially. And the law in such a case undoubtedly is, that confinement is justifiable, if the safety either of the patient or of others requires it, or it is necessary for his restoration to health.[3]

Harmless lunatics confined when necessary.

But the general practice is, not to direct, even under a finding of lunacy, the confinement of the lunatic, except such confinement be required by public peace and morals, or by the interest of the patient.[4]

§ 105. In respect to *drunkenness*, the law is, that, while occasional acts of intoxication will not justify a finding of "habitual" drunkenness, yet, on the other hand, it is not necessary for such a finding that the party should be constantly in an intoxicated state. Thus, in Pennsylvania,

What constitutes habitual drunkard.

[1] Nottridge *v.* Ripley, before Chief Baron Pollock, sitting at nisi prius, June, 1849, reported in full in Journ. of Psyc. Med. vol. ii. p. 630.

[2] See a remonstrance with the lord chief baron, touching the case of Nottridge *v.* Ripley, by John Conolly, M.D., 1849. A letter to the lord chancellor on the defect of the law regulating the custody of lunatics, by Charles Curten Cooper, London, 1849. Psychological Review, vol. ii. p. 564; ib. vol. iii. p. 14. A letter to the Right Hon. Lord Ashley, M. P., relative to the case of Nottridge *v.* Ripley, Dundee, 1849.

[3] Hinchman *v.* Richie, Brightly R. 143. Under the Louisiana code there are three things necessary to justify the interdiction of a party as insane: 1. The absolute incapacity to administer one's estate; 2. The absolute incapacity to take care of one's person; and 3. An actual and unavoidable necessity to interdict. Francke *v.* His Wife, 29 La. Ann. 302.

[4] Com. *v.* Kirkbride, 2 Brewst. 400. See King's Co. Asylum *in re*, 7 Abb. N. C. (N. Y.) 425.

Knox, P. J., in putting the case upon a traverse to the jury, said: "Neither was it necessary to make out the case that a person should be constantly in an intoxicated state; that a man might be an habitual drunkard, and yet be sober at times for days and weeks together. That the question was, had the traverser a fixed habit of drunkenness? Was he habituated to intoxication whenever the opportunity offered? The question is one of fact for the jury to find, but the court has no hesitation in saying, that the man who is intoxicated or drunk one-half of his time, should be pronounced an habitual drunkard." And, in the supreme court, Rogers, J., said: "To constitute an habitual drunkard, it is not necessary that a man should be always drunk. It is impossible to lay down any fixed rule as to when a man shall be deemed an habitual drunkard. It must depend upon the decision of the jury under the direction of the court. It may, however, be safely said, that to bring a man within the meaning of the act, it is not necessary that he should always be drunk. Occasional acts of drunkenness, as the judge says, do not make one an habitual drunkard. Nor is it necessary he should be continually in an intoxicated state. A man may be an habitual drunkard, and yet be sober for days and weeks together. The only rule is, has he a fixed habit of drunkenness? Was he habituated to intemperance whenever the opportunity offered? We agree that a man who is intoxicated or drunk one-half his time is an habitual drunkard, and should be pronounced such. We also concur with the court, that, if the jury found the traverser to have been at the date of the inquisition an habitual drunkard, it was necessary to decide whether he was capable or incapable of managing his estate. His incapacity in that event is a conclusion of law. It is not necessary to say, it is a *presumptio juris et de jure;* but, at least, it throws the burden of proof of capacity on the traversers. Indeed, it may be well doubted, whether his management or mismanagement of his estate is a matter of inquiry. It is very certain, under the act of the 13th of June, 1836, proceedings may be instituted against an habitual drunkard who has no estate. But this cannot be if the mismanagement of it be necessary. It is well said, that there must be an evidence of squandering property, to support a proceeding to declare an individual an habitual drunkard, else the object of the act in many cases would be defeated. For it

is precautionary in its design, and hence a disposition of mind or body which might lead to the wasting of an estate, is sufficient to justify the enforcement of its provisions.[1] It is indeed impossible that a man can be an habitual drunkard without waste or mismanagement, as the very act of drunkenness is itself waste. In this case, even if required, the evidence was full and plenary to this point."[2]

So, also, has it been held in Vermont, that an habitual drunkard "is one who is in the habit of getting drunk, or one who commonly or frequently gets drunk," not that he is constantly or universally drunk.[3]

Extravagance and profligacy need not constitute incompetency.

§ 106. An order was made on 23d November, 1861, in the English chancery, for a commission in the case of William Frederick Windham, of Felbrigg Hall, Norfolk. The petitioner's case was imbecility and a consequent inability on the part of the respondent to manage his own estate. It appeared that he was sent in his boyhood to Eton; but that while in that school his conduct was so unique and extravagant as to lead to the belief that he was at that time deranged. As he became older, these peculiarities became more marked. He was extravagant and absurd in his purchases; he incurred enormous debts; he was guilty at public places of gross indecency which the presence of ladies did not restrain; his associates were among the uneducated and the profligate; and three weeks after he came of age he married a woman of disreputable character, knowing that up to the night before the marriage she had cohabited with one of his associates as the latter's mistress. Although his income at this time was not more than £1580, he presented her, shortly after his marriage, with jewelry valued between £12,000 and £14,000, and settled on her absolutely £800

[1] Sill *v.* McNight, 7 W. & S. 245.

[2] Ludwick *v.* Com., 18 Penn. St. 173. In McGinnis *v.* Com., 74 Penn. St. 245, Agnew, J., said: "It is sufficient to find the person an habitual drunkard. The legal consequences flow from that fact, and not from any supposed or actual capacity of the habitual drunkard to manage his business well. . . It is, therefore, not the province of the jury, upon a traverse of the inquisition, to determine the extent of the traverser's ability to transact his business."

[3] State *v.* Pratt, 34 Vt. 323. As to what constitutes habitual drunkenness in a criminal sense, see Wh. Cr. L. 8th ed. § 1447.

per annum. Although, after her marriage, she cohabited, to his knowledge, with another man, he condoned this act, continuing to live with her. His habits were devoid of cleanliness; and he sometimes displayed utter callousness. Unfortunately, when the question came to be tried, there was the usual conflict of opinion among the experts. Dr. Forbes Winslow and Dr. Mayo, it it true, whom the court appointed medical examiners, and Dr. Bright, who was associated with them as assessors, united in the emphatic opinion that the respondent was in a state of mental imbecility, and was incapable of managing his own affairs. Dr. Southey, who was appointed subsequently by the lord justices as an additional examiner, came to the same result. On the other hand, Dr. Tuke, Dr. Sutherland, Dr. Hood, Dr. Seymour, and Dr. Conolly testified, that, in their opinion, Mr. Windham was sane and of sound business capacity; and Dr. Tuke, in particular, sustained this position on the ground (1) of Mr. Windham's remarkable powers of observation, and (2) of the skill with which he had conducted his defence. Mr. Warren, master in chancery, charged the jury that "the question to be decided was not whether Mr. Windham was absolutely insane, but whether there was such imbecility of mind, not amounting to insanity, as to render him liable to be robbed by any one. The broad question was whether he was of sufficiently sound mind to be intrusted with the management of himself and his affairs. Mere weakness of character, mere liability to impulse, good or bad, mere imprudence, recklessness, and eccentricity did not constitute unsoundness of mind, unless, in looking fairly at the whole of the evidence, there was good reason to refer them to a morbid condition of intellect. They might furnish evidence of unsoundness, but they did not constitute it." The jury, by a majority of 15 to 8, returned as a verdict that "Mr. Windham is of sound mind and capable of taking care of himself and his affairs." "After the verdict was returned," says Dr. Taylor,[1] "he was guilty of many extravagant acts, exhausted a splendid fortune and became a bankrupt; showing that, whatever legal soundness of mind he might possess in the opinion of two-thirds of the jury, he practically did not evince that

[1] Taylor's Med. Jur., Penrose's ed. p. 665. A case, corresponding in many respects with the above, is that of Winter, reported in 26 Am. Journal of Ins. 47.

capacity which they declared him to possess in taking care of himself or his affairs." But Dr. Taylor, in citing bankruptcy, and even waste, as evidence of want of business capacity, mistakes the purport of laws instituting commissions of lunacy. They are not designed to place men, who are simply extravagant or reckless, in the hands of a committee, for, if so, all business would be at a standstill, and half the estates of the country would in a few years be placed in chancery. The question for such commission simply is, Is the respondent *incapable* from mental unsoundness of managing his own affairs? If capable, he must be allowed to contribute his own energies and means to that volume of public wealth whose ebb and flow are essential to the economical activity of the state. He must take his chance, and learn, if he can, from the discipline of life, that wisdom which, perhaps, he may not at first display. "Mere extravagance or follies," as declared by Lord Chelmsford when commenting on this case in the House of Lords, "are not, therefore, sufficient, unless the imbecility amounted to unsoundness of mind."[1]

§ 107. If a commission be found to have been irregular in its inception or execution, or if substantial justice has not been done, either the commission may be quashed, or, if it has matured into an inquisition, the inquisition may be set aside. Thus inquisitions have been set aside because of undue interference by the commissioners with the summoning of the jury;[2] because the sheriff improperly interfered with the deliberations of the jury;[3] because the alleged lunatic had no notice given him of its occurrence;[4] because a stranger was appointed committee without the assent of the relatives of the lunatic and without a reference;[5] because the commissioners refused to issue subpœnas in behalf of the alleged lunatic;[6] because upon the personal examination of the lunatic by the court, and of the

Proceedings may be set aside if irregular or inequitable.

[1] And where, by statute, a guardian may be appointed for a spendthrift, to warrant such appointment there must be evidence of excessive drinking, gaming, debauchery, and the like. Proof of weak-minded habits in the management of money is not enough. Morey's Appeal, 57 N. H. 54.

[2] Wager *in re*, 6 Paige, 11.

[3] Arnhout *in re*, 1 Paige, 497.

[4] Tracy *in re*, 1 Paige, 580.

[5] Lamoree's case, 11 Abb. 274; S. C., 32 Barb. 122, and 19 How. Pr. 375.

[6] *Ex parte* Plank, 3 Am. L. J., N. S. 518.

evidence adduced upon the trial, the court held that the jury erred in finding their verdict; though in such case the introduction of new evidence, where no valid reason can be shown why the same was not produced upon the trial, will not be permitted *ex parte* to contradict the verdict, unless there has been gross error or undue prejudice exhibited on the part of the jury.[1]

The inquisition, also, is defective, if it does not conform to the statute in its finding;[2] though a mere misnomer of the lunatic in the inquisition and other proceedings will not, of itself, invalidate them. For this may be amended by an order entering such amendment into future documents in which such lunatic's name is mentioned, the only point to be considered being the establishment of his identity.[3]

Where the inquisition and proceedings have been set aside, for any cause, a second commission cannot be issued on the original petition, because the continuance of the reasons upon which the first was based cannot be presumed at law, but must be proved *de novo*.[4]

[1] Russell *in re*, 1 Barb. Ch. 38; Tebout *in re*, 9 Abb. 211; Ordronaux, *ut supra*, 222–250.

[2] Morgan *in re*, 7 Paige, 236.

[3] Crawford *in re*, 1 Myl. & Cr. 240; Ordronaux, *ut supra*.

[4] Hinchman *v.* Richie, Bright. 144, 182; Ordronaux, *ut supra*.

CHAPTER IV.

INSANITY AS A DEFENCE TO CHARGE OF CRIME.

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"Moral insanity" is no defence, § 163.
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I. GENERAL RULE.[1]

§ 108. Two preliminary questions meet us as we enter on the discussion of criminal responsibility. The first is, whether the

[1] The consideration to be given to this species of defence was thus justly and humanely stated by Parker, C. J., of New Hampshire, in a charge to the grand jury: "The public papers, in giving reports of trials, often say, 'the

definition of "insanity" is for the court or for the jury, and was mooted in 1870 and 1871 in two able judgments

Theory that insanity is a

defence was, as usual, insanity,' or make use of some other expression, indicating that this species of defence is resorted to, in desperation, for the purpose of aiding in the escape of criminals. Such opinions are propagated, in many instances, by those whose feelings are too much enlisted, or whose ignorance respecting the subject is too great, to permit them to form a dispassionate and intelligent judgment; and they have a very pernicious tendency, inasmuch as they excite the public mind, and the unfortunate individual who is really entitled to the benefit of such defence is thereby sometimes deprived of a fair trial. They tend to make the defence of insanity odious, to create an impression against its truth in the outset, and thus to bias the mind of the jury against the prisoner, and to induce them to give little heed to the evidence, in the very cases where the greatest care and attention and impartiality are necessary for the development of truth and the attainment of justice.

"We all concur in the doctrine of the law, that, for acts committed during a period of insanity, and induced by it, the party is not responsible; that, when the criminal mind is wanting—when, instead of being guided by the reason which God bestowed, the individual is excited and led on by insane fury and impulse, or by the aberrations of a wandering intellect, or a morbid and diseased imagination, or a false and distorted vision and perception of things—punishment should not follow the act as for an offence committed; that, when the faculty of distinguishing between right and wrong is wanting, the individual ought not to be held as a moral and accountable agent. As well, nay, much better, might we, as was formerly done in France, institute prosecutions against the brute creation for offences committed by them, and hang a beast for homicide, than to prosecute and condemn a human being who is deprived of his reason; for in such case there is no hope or restoration to a right mind, and a reinstating of a fellow-citizen, who has been once lost to the community, in the rights and affections of humanity. But if we imbibe the idea that instances of insanity are very rare—that derangement exists only when it manifests itself by incoherent language and unrestrained fury — that the defence, when offered, is probably the last resort of an untiring advocate, who, convinced that no real defence can avail, will not hesitate to palm off a pretended derangement to procure the escape of his client from merited punishment—if in this way we steel our hearts against all conviction, it is of little avail that we agree to the abstract proposition, that insanity does in fact furnish a sufficient defence against an accusation for crime.

"There are undoubtedly instances where this defence is attempted from the mere conviction that nothing else will avail—cases where the advocate forgets the high duty to which he is called, and excites a prejudice against the case of others, by attempting to procure the escape of a criminal under this pretence; but such are truly rare, and usually unsuccessful."

"Lawyers and physicians," says Mr. Stephen, in his treatise on Criminal Law (London, 1863, p. 87), "mean two different things by the word 'madness.' *A lawyer means conduct of a certain character.* A physician means a

question exclusively of fact.

of the supreme court of New Hampshire. In the first of these cases,[1] the defence was "dipsomania;" and the court trying the case (Perley, C. J., and Doe, J.) instructed the jury that, "whether there was such a mental disease as dipsomania, and whether the killing of Brown (the deceased) was the product of such disease, were questions of fact for the jury."[2] In a subsequent trial for murder in killing the defendant's wife, where the defence was an insane delusion that the wife had been guilty of adultery, the court (Doe, J.) charged the jury that, if the defendant killed his wife in a manner that would be criminal and unlawful if the defendant were sane, "the verdict should be not guilty by reason of insanity, if the killing was the *offspring or product of mental disease in the defendant.* Neither delusion nor knowledge of right and wrong, nor design or cunning in planning and executing the killing and escaping or avoiding detection, nor ability to recognize acquaintances, or to labor, or transact business, or manage affairs, is as matter of law a test of mental disease; but all symptoms and all tests of mental disease are purely matters of fact to be determined by the jury.

"*Whether the defendant had a mental disease, and whether the killing of his wife was the product of such disease, are questions of fact for the jury.*" "*Insanity is mental disease—a disease of the mind. An act produced by mental disease is not crime.* If the

certain disease, one of the effects of which is to produce such conduct. If the pathological character of madness could be accurately ascertained, the difference would be perfectly clear. Suppose, for example, it were shown to consist in obscure inflammation of the brain. It would obviously be monstrous to set aside a perfectly reasonable will, made with every circumstance of deliberation and reflection, because, after the testator's death, it was proved, by dissection, that, at the time of executing the will, he had obscure inflammation of the brain; yet this would be demonstrative proof that in the medical sense of the word he was mad." But would it? Certainly, unless there be proof of insane *conduct*, no amount of cerebral disorder or hereditary insane antecedents has been held, by intelligent medical experts, to raise even the presumption of insanity. See articles in Am. Journ. Ins. for 1872, p. 70; *ibid.*, vol. 31, p. 30; and by Dr. Gray, in Trans. Med. Soc. N. Y., 1871. See also article by Dr. Ray in Am. Journ. Med. Sciences, N. S. vol. 65, p. 460, and one in 18 Journ. Ment. Sci. 311. And see "The Scientific Value of the Legal Tests of Insanity," by J. R. Reynolds, M.D., Lond. 1872.

[1] State *v.* Pike, 49 N. H. 399.

[2] See this case examined at large, *infra*, §§ 190, 191.

defendant had a mental disease which irresistibly impelled him to kill his wife—if the killing was the product of mental disease in him —he is not guilty. If the defendant had an insane impulse to kill his wife, and could have successfully resisted it, he was responsible. Whether every insane impulse is always irresistible, is a question of fact.

"Whether in this case the defendant had an insane impulse to kill his wife, and whether he could resist it, are questions of fact. Whether an act may be produced by partial insanity when no connection can be discovered between the act and the disease, is a question of fact. The defendant is to be acquitted on the ground of insanity, unless the jury are satisfied beyond a reasonable doubt that the killing was not produced by mental disease." It was held by the supreme court in error that these instructions were correct.[1]

§ 109. If the rule be that "mental disease" is exclusively a question of fact for a jury, and if it be also exclusively a question of fact for the jury to determine whether the act complained of was the product of mental disease, then any further examination of the question as a matter of law is unnecessary. All that is required is to use the words in question in a charge to the jury, and the matter, so far as concerns the court, is closed. It is now submitted, however, that, able and learned as are the judges who have maintained this view, it cannot be sustained on reasons either psychological or judicial. That it cannot be sustained on authority, these learned judges themselves concede.

Objections to this view.

§ 110. The proposition before us, then, is, that the entire question of responsibility is to be left to the jury, with the instruction that if the act was the product of "mental disease" they are to acquit. But what is "mental disease?" And here we encounter the first obstacle to this method of solving this vexed and yet most important question. "Mental disease," in fact, is a term so indeterminate and vague, that to leave the question to the jury with the instructions here criticized, is to leave it to them without any instructions at all. Mental, like physical disease, ranges from slight indisposition or disorder, on the one side, to the comatose state immediately pre-

Term "mental disease" includes every phase of passion.

[1] See Stevens *v.* State, 31 Ind. 485; and article in 4 Am. Law Review, 530; see *infra*, § 191, note *z*.

ceding dissolution, on the other. There is no phase of *ennui* or of misanthropy, no tinge of jealousy or avarice, however faint; no corrosion of remorse, however just, that has not received this title. States of mind eminently responsible—those which the most latitudinarian ethics would pronounce as peculiarly the subjects for the discipline and penalties of the law—have, as was the case with Lady Macbeth, been invested with the title as readily as those where responsibility is confessedly gone.[1] Webster, in his Dictionary, tells us that "in a *figurative* sense we speak of a diseased mind," and he, as well as Worcester and Richardson, defines mental disease as, first, want of *ease*, and, secondly, a morbid or unhealthy condition, a definition which would include every mental state which makes crime the object of desire. "In the world ye shall have *disease*;' so runs Wickliffe's translation of John, xvi. 33; and want of rest and disquiet give still the primary meaning of the word, however much, in our modern complimentary way of toning down by inadequate epithets subjects distasteful to us, it may have been metaphorically extended to denote active maladies. Yet, even when thus metaphorically enlarged, the term includes passion in every phase. Thus, in the second epistle of his Essay on Man, Pope says:—

> "*Hence different passions* more or less inflame,
> As strong or weak, the organs of the frame:
> And hence *one master-passion* in the breast,
> Like Aaron's serpent, swallows up the rest.
> As man, perhaps, the moment of his breath,
> Receives the lurking principle of death:
> *The young disease*, which must subdue at length,
> Grows with his growth, and strengthens with his strength;
> So, cast and mingled with his very frame,
> *The mind's disease*, its ruling passion came," etc.

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[1] It is remarkable how pointedly the passage from which the term "mind diseased" has crept into common use, brings out the idea of moral responsibility as distinguished from irresponsibility; and how thoroughly inconsistent is the state it depicts with irresponsible insanity:—

MACBETH.

Canst thou not minister to a mind diseased,
Pluck from the memory a rooted sorrow,
Raze out the written troubles of the brain,
And with some *sweet oblivious* antidote,
Cleanse the stuffed bosom of that perilous stuff
Which weighs upon the heart?

DOCTOR.

Therein the patient must minister to himself.

§ 111. Now, if we substitute for "mental disease" in the formula given in New Hampshire, any one of the definitions just noticed, we will at once see how inadequate is this mode of disposing of the question. No one would maintain, for instance, that it would not be in violation of all the fundamental sanctions of criminal jurisprudence to tell the jury that they must acquit the defendant if they believe the act was produced by a "mind ill at ease," or by a "morbid or unhealthy condition of the mind," or by the mind's "ruling passion." Yet the term "mental disease" legitimately and primarily includes all these states, and may be properly used to describe every evil passion by which crime may be caused. In fact, if criminal desire be, as is argued by eminent physicists, always a mental disease, then the instructions under controversy are equivalent to telling the jury that they must acquit in all cases where the crime was the product of criminal desire. Under such a system, only the *innocent* could be convicted of crime, for only the innocent could be pronounced free from this psychical peculiarity.

And is ambiguous.

How ambiguous the term is, appears, in fact, from one of the very rulings to which we here except. It was declared, in the first of the cases commented on,[1] that *dipsomania* was one of the defences of which the jury were to be thus the supreme judges. The argument may be thus technically stated: All forms of mental disease are, both as to their existence and their results, for the determination of the jury; dipsomania is a form of mental disease; therefore dipsomania, both as to its existence and results, is for the exclusive determination of the jury. But those who have introduced the term "dipsomania," and who are the sole authorities who recognize it as a distinct disease, declare that it is not a "mental" disease at all; that it is exclusively a moral disease; and that it may coexist with a mind *undiseased* and sane. In order, therefore, to sustain the conclusions of the court, we are obliged to make "mental" include "moral," and thus expand the instructions to include *moral* disease, or morbid condition of morals, as well as morbid condition of mind. The court, therefore, while nominally declining to define insanity, virtually defines it summarily, by making mental disease include moral disorder.

[1] State *v.* Pike, *ut supra*.

§ 112. But it is ably argued by Judge Doe, in the case just referred to, that this is a question to be determined by experts who alone can define scientifically what insanity is. This position is hereafter fully discussed, when this particular point comes up for special examination.[1] It is sufficient at this point to state (1) that the question in criminal issues is not insanity but irresponsibility, which it is eminently important should be limited by positive definition by the highest judicial authority the state can constitute; and (2) that experts do not form such an authority, (a) because their sense, as a body, cannot be obtained by any process known to our courts, (b) because there is no independent court of experts, which on notice to both sides, and after argument, if necessary, can, when the experts called in a particular case conflict, give a judicial opinion upon the issue; and (c) because, in many cases of criminal defence, only those eccentric and exceptional experts are selected who believe in some wild theory which may help out the defendant's case.[2]

Definition of insanity must come from court, not experts.

§ 113. Rejecting, therefore, as impracticable and unphilosophical, the suggestion to devolve on experts the determination of what "mental disease" is, and what are its results, we fall back upon the question in its original, and what, indeed, must in this view be its final, state, and ask whether a *jury* is a body fit to lay down settled rules on this momentous subject. And in answering this, we must remember what the issue really is. It is simply "responsible" or "irresponsible," an issue of all others the most vital, both to the party himself, whose civil existence depends on the result, and to the community, which is thus to be advised whether it is to cage him as a dangerous lunatic, or to permit him to receive at once the discipline and the immunities which belong to a free citizen of a free state. Is it fit to intrust this question to the decision of a jury with instructions so vague as those which are given above? Is a jury competent, when the matter is so left to it, to establish definite rules which will place the doctrine of responsibility on grounds which are just and safe?

Jury not qualified to decide question of law.

§ 114. We submit they are not, for the following reasons: (1) They do not form a continuous body, prepared for their office, as are our courts of justice, by prior study. (2) The reasons of their

[1] *Infra*, §§ 194–200.

[2] See also *infra*, §§ 194–200.

decisions are not given, so that these decisions can form the basis of future decisions. Each decision stands by itself, not controlled by those which preceded it, and not controlling those which succeed. (3) There is no "supreme" jury, by whom the decisions of "inferior" juries can be corrected and symmetrized. Hence, instead of obtaining in this way a definite and consistent body of law, which, whatever may be its merits, will at least be a rule of action, we will have a series of disjointed and conflicting edicts, from which no rule of action can be deduced. Yet, after all, it is system, uniformity, and consistency that penal law, in this respect, eminently needs. We may illustrate this by recurring again to the doctrine of moral insanity. If the existence of this disease, as conferring irresponsibility, be maintained, then the community will protect itself by putting persons "morally insane" under permanent restraint. If the doctrine be denied, then such persons will, like all others, be subject to penal discipline when they do wrong, and, if they persist in doing wrong, then their lives will be spent in prison. What is necessary, therefore, is not so much that this doctrine should be decided in any particular way, but that there should be *some* decision, and that this decision should be expressly and positively announced and be made a precedent for future cases. But this is what a jury cannot do. In deciding the question whether "moral insanity" is a defence, no jury, if unguided by instructions of the court, will follow the precedents of former cases, or establish a precedent by which future cases can be ruled. The whole law, in this respect, will become a blank; and the doctrine of responsibility thrown into a chaos in which it will be impossible to determine who is responsible or irresponsible, sane or insane.

§ 115. The definition of penal responsibility, therefore, is a high prerogative which judges, educated for the office as they are, and appointed by the state as the guardians at once of the sovereignty of the law and the liberty of the citizen, cannot surrender or divide.[1] The state has the right to call on them to establish a consistent system which the community may take for its guidance. Every man may be exposed to danger from others, and therefore every man has a right to know whether he must protect himself beforehand by appealing for a com-

Question therefore rests with judges.

[1] R. *v.* Richards, 1 F. & F. 87; see *infra*, §§ 190–200.

mission of lunacy against his assailant, or must rely for redress on the ordinary common law process of indictment. Every man is liable to be seized at any moment by such commission of lunacy, and we have a right in this view to demand that there should be a definite line of responsible judicial decisions to determine under what circumstances we are to be deprived of liberty and estate. Even persons charged with crime have a right to be supplied with accurate information of the law by which their defence can be shaped. And, above all, society at large has a right to expect that the law which regulates the relations of reason to crime[1] should be mapped out with precision by learned jurists, dedicated by solemn sanctions to continuous judicial service, whose decisions on trial can be reviewed on appeal, and who, if incapable or corrupt, can be removed. Nor is the task one inconsistent with the judicial office. The determination of such questions no doubt belongs to the highest philosophical jurisprudence, but it is one which even the homeliest practical jurisprudence cannot avoid without serious injury to the state.[2]

II. SPECIAL EXCEPTIONS.

Enumeration of exceptions.

§ 116. There is, however, a second preliminary difficulty that remains to be noticed before proceeding to an examination of the great question of criminal responsibility. The first has just been disposed of. The second, which is coeval with the existence of this branch of the law, arises from the opposite extreme, namely, from the desire to force into an inflexible and positive judicial code, special opinions delivered by judges when particular facts requiring such opinions were under examination.

Thus, for instance, when a defendant, in whom there is no pretence of mania or homicidal insanity, claims to be exempt from punishment on the ground of incapacity to distinguish right from wrong, the court very properly tells the jury that the question for them to determine is, whether or no he labors under such particular incapacity. The error has been to seize such an expression as this as an arbitrary elementary dogma, and to insist on its application to all other cases. Or, take the converse, and suppose the defence is merely homicidal insanity. In such a case it would be very proper to tell the jury that, unless they believe the homicidal im-

[1] See *infra*, §§ 183-188.

[2] See §§ 185–189.

pulse to have been uncontrollable, they must convict. And yet nothing would be more unjust than to make this proposition, true in itself, a general rule to bear on such cases as idiocy. It is proposed to avoid this difficulty by treating this question practically, in the only way in which it can arise in courts, and to consider briefly, not what is the general limit of moral responsibility in the abstract, but in what cases such responsibility ceases to exist.[1] These will now be discussed.

[1] The difficulty in this respect has been increased by the looseness with which legal adjudications are cited by even some of the more eminent text-writers. In fact, while the exigencies of counsel and the duty of judges require a constant recourse to the text-books on this particular science, in making up such text-books the authorized law reports have not been sufficiently relied upon.

Of the mistakes arising from looseness of citation in this respect, we may take as an illustration Wood's case, which is invoked by Dr. Winslow, in his Lectures on Insanity (p. 102), to show that in America "a verdict of lunacy" will be recorded under circumstances which really show nothing more than vehement passion and morbid excitement. In that case, which occurred in Philadelphia in 1838, a father shot his daughter in a paroxysm of rage, caused by her improvident marriage. The prosecution was abandoned by the attorney-general, under circumstances which were not at all connected with the defendant's sanity or insanity; and a verdict of *acquittal* was rendered, not of lunacy, in the teeth of a charge from the very able and humane judge (Judge King) who tried the case, that the defence of insanity had not been in any degree substantiated. The verdict is no authority whatever. It was produced by circumstances very derogatory to public justice, it was received with unbroken disapprobation by the entire community, and it was in direct opposition to the charge of the court, instead of being responsive to it. Had the official report of the case been resorted to, the last fact, at least, would have been discovered.

Newspaper and other unofficial reports, in fact, however interesting, are of no legal authority, and they should be to a peculiar degree received with the qualifications which should be attached to cases decided at *nisi prius*. What a judge tells a jury is meant for a particular issue. If the evidence should show an old grudge, his duty would undoubtedly be to say to the jury that drunkenness must be left entirely out of consideration. If the defendant and the deceased were mere strangers, and the defendant in sudden passion, from what, to a man in his state of mind, would be adequate provocation, killed the deceased, it would be proper to tell the jury that drunkenness in this case would lower the offence to manslaughter. It is plain, however, that expressions directed to a particular state of facts, cannot properly be severed from the context, and propounded as absolute independent principles applicable to all cases whatever. It is only by carefully marshalling the facts that we learn what the opinion of the judge trying the case really was, and even then, the position of the court, the opportunities it has possessed for revision and a consulta-

1. *Where the defendant is incapable of distinguishing right from wrong in reference to the particular act.*

§ 117. Under this head may be enumerated persons afflicted with idiocy or with general mania. It is certain that wherever such incapacity is shown to exist, the court will direct an acquittal; or if a jury should convict in the teeth of such instructions, the court will set the verdict aside. The authorities to this effect are so numerous, that a general reference to them is all that is here necessary; it being observed at the same time, that while the earlier cases lean to the position that such depravation of understanding must be general, it is now conceded that it is enough, if it is shown to have existed in reference to the particular act.[1]

Idiots and maniacs irresponsible.

The English law in this relation took definite and final shape in the answer of the fifteen judges to the question propounded to them by the house of lords in June, 1843. "The jury," they said, "ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was

tion of authorities after argument, and the authenticity and accuracy of the report, enter largely into the question how far the opinion so expressed is of weight. For convictions in cases of alleged insanity, see 32 Am. Journ. Ins. 405; 34 ibid. 368; 26 Journ. Ment. Sci. 247.

[1] See Wh. Cr. L. 8th ed. §§ 34 *et seq.*, where the later authorities are given; 1 Inst. 247; Bac. Abr. Idiot; Co. Litt. 247 *a*; 1 Russ. on Cr. by Greaves, 13; 1 Hawk. cl. s. 3; 4 Bla. Com. 24; Collinson on Lunacy, 573, 673, (*n*); R. *v.* Oxford, 9 C. & P. 525; Burrow's case, 1 Lewin, 238; R. *v.* Goode, 7 A. & E. 536; 67 Hans. Par. Deb. 728; Bowler's case, Hadfield's case, ibid. 480; 1 Russ. 11; 27 How. St. Tr. 1316; Com. *v.* Rogers, 7 Metc. 500; 7 Bost. L. R. 449; Com. *v.* Mosler, 4 Penn. St. 264; Freeman *v.* People, 4 Denio, 9; State *v.* Spencer, 21 N. J. L. 196; State *v.* Gardiner, Wright, Oh. 392; Com. *v.* Farkin, 3 Penn. L. J. 482; Vance *v.* Com. 2 Virg. C. 132; McAllister *v.* State, 17 Ala. 434; U. S. *v.* Shultz, 6 McLean, 120; People *v.* Sprague, 2 Parker, C. R. 43; State *v.* Huting, 21 Mo. 464; R. *v.* Barton, 3 Cox, C. C. 275; R. *v.* Offord, 5 C. & P. 168; R. *v.* Higginson, 1 C. & K. 129; R. *v.* Stokes, 3 C. & K. 188; R. *v.* Layton, 4 Cox, C. C. 149; R. *v.* Vaughan, 1 Cox, C. C. 80; People *v.* Coffman, 24 Cal. 230; Com. *v.* Heath, 11 Gray, 303; State *v.* Lawrance, 57 Me. 574.

doing, or if he did know it, that he did not know he was doing what was wrong."[1]

§ 118. Severe, however, as the rule is, viewing it as an abstract proposition, the English judges have not been unindulgent when determining as to the amount of evidence from which ignorance as to right and wrong may be inferred. Thus, a married woman having killed her husband immediately after an apparent recovery from a disease (the result of childbirth), which caused a great loss of blood, and exhausted the vessels of the brain, and thus weakened its power, and tended to produce insane delusions of the senses, which, while suffering under such disease, she complained of, and which, by her own account, had been renewed at the time of the act of homicide (although they were not such as would lead to it): these facts were held by Erle, J., to be evidence from which a jury might properly find that she was not in such a state of mind at the time of the act as to know its nature or be accountable for it.[2]

English relaxation of rule in other cases.

So, also, where a married woman, fondly attached to her children, and apparently most happy in her family, had poisoned two of them with some evidence of deliberation and design; but it appeared that there was insanity in her family; and from her demeanor before and after the act, which, although not wholly irrational, yet was strangely erratic and excited; and from recent antecedents, and the presence of certain exciting causes of insanity, and her own account of her sensations, the medical men were of opinion that she was laboring under actual cerebral disease, and that she was in a paroxysm of insanity at the time of the act; this was left by Wightman, J., to the jury, as evidence on which they might rightly find her not guilty on the ground of insanity.[3]

§ 119. Is, however, the "right and wrong" test to be that by which all cases of penal insanity are to be tried? The negative will be presently argued; and it will be maintained that the defence of insanity is also sustained, when (1) there is an insane delusion from which the crime emanates, and (2) when, being at the time insane, the defendant is forced to the act by an irresistible impulse; though he in each

General test is knowledge of right and wrong.

[1] See R. *v.* McNaghten, 1 C. & K. at p. 134; 8 Scott N. R. 595.

[2] R. *v.* Law, 2 F. & F. 836.

[3] Wh. Cr. L. 8th ed. § 35; R. *v.* Vyse, 3 F. & F. 247.

case knows the act is forbidden by the laws of the land. But in cases which do not fall within those exceptions, the prevalent opinion is that if the defendant knew enough to distinguish right from wrong as to the particular case, the defence of insanity is not made out.[1]

Right and wrong test generally satisfactory.

§ 120. Whatever may be the theory of responsibility we adopt, there is much to commend the "right and wrong" test to our acceptance. As is shown in another work,[2] there are three theories on which punishment is based: 1st, that of retribution; 2d, that of prevention; and 3d, that of example. Whichever of these views we take, it seems proper to make a consciousness of right and wrong as to a particular act a condition of responsibility for that act. If we take the theory of retribution, we cannot in justice impose punishment where there is no guilt. *Punitur quia peccatum est*, is the basis of that theory; there must be sin to sustain punishment, and sin involves sense of wrong. On the retributive theory, therefore, we are justified in holding all persons, conscious of the wrongfulness of a particular act which they commit, responsible for that act. And on the prevention and example theories, the argument for punishment of persons who, however disturbed may be their minds, are conscious of the difference between right and wrong, as to the particular act, is still stronger. Penal law is a general system, applicable to all subjects of the state imposing it, exacting certain duties, and prohibiting that which law-makers consider to be wrong.[3] The law cannot, however, forbid, without punishing in case of disobedience; for prohibition without punishment ceases to be prohibition. Now, it is conceded by those having charge of lunatics, that they are the subjects of discipline. In fact, the police system which prevails in all lunatic asylums assumes this, even should we cast aside the abundant general testimony from experts that lunatics are, as a rule, open to the influence of fear of punishment. If so, do they differ, except in degree, from men who are the slaves of passion, or the victims of demoralizing education? Mitigation of guilt, indeed, and diminished responsibility, may be claimed for them on account

[1] See cases *supra;* R. *v.* Oxford, *supra*, § 117; An. Reg. 1840, pt. ii. p. 262; R. *v.* McNaghten, ibid. 1843, pt. ii. p. 35; *supra*, § 117; the American authorities will be found grouped in Wh. Cr. L. 8th ed. §§ 37 *et seq.*

[2] Wh. Cr. L. 8th ed. §§ 1 *et seq.*

[3] See *infra*, §§ 183–188.

of their infirmity; but, as penal law can control their outbursts, the interests of society require that over them penal law should continue to assert its control.

§ 121. Yet, admitting the force of this, there are preponderating reasons which lead us again (1881) to assert the qualifications we expressed in former editions of this work. That the "right and wrong" test does not cover all the cases of legitimate insane irresponsibility, will now be shown.

But with exceptions.

§ 122. Medical and psychological observation, based on an induction which each year makes at once more extended in its materials and more absolute in its results, tells us that there are persons unquestionably insane who are capable of being instructed in the "law of the land," of knowing what this law is, both in its general character and its results, and of being deterred by proper sanction, from breaking such law.[1]

Insanity coexisting with power to distinguish between right and wrong. This should diminish responsibility.

What is to be done with such lunatics, on the test which is above given? Are they to be punished, as if they were sane, if they happen to violate a law of which they are aware? This undoubtedly is one of the most profound and delicate questions which penal jurisprudence can approach. The North German Code has endeavored to solve the difficulty by establishing in such cases what is called *diminished* responsibility, followed, in cases of conviction, by penalties graduated on a milder scale than those which are visited on the entirely sane. And, assuming, as is really the case, that there are grades of insanity just as there are grades of sanity, and that the two melt together at their juncture almost imperceptibly as do day and night in twilight,[2] it is philosophically just, that in the lower grades of sanity, and in the more "rational" and responsible grades of insanity, such a rule should be imposed. If it be not, either society will be exposed to the unnecessary peril of having its order disturbed by the inroads of a class of men who are not insane enough to be constantly confined, but are too insane to be punished, or the great cruelty would be inflicted on this very class, whom a just and humane penal system could restrain, of shut-

[1] See *infra*, §§ 378, 389, 410. The recent authorities will be found in Wh. Cr. L. 8th ed. § 40 *et seq.*

[2] See *supra*, § 50.

ting them up for life in asylums. Our common law reaches somewhat the same remedy by declaring, as will hereafter be seen, that there are certain abnormal states of mind, *e. g.*, drunkenness, and by the same process of reasoning, exaltation and excitement produced by cerebral disease, which, while they do not destroy responsibility, or justify a jury in rendering a verdict of not guilty as to the *fact* of guilt, neutralize the presumption of malice and of premeditated intent, and lead, therefore, to a conviction of the offence charged in its minor and less aggravated stages. Particularly is this the case in prosecutions for homicide, where, in cases of mental turmoil, excitement, or debility, the specific and deliberate and cool intent to take life, essential, in most American states, to murder in the first degree, is not capable of proof, and in which, therefore, the verdict is properly murder in the second degree, or manslaughter.[1]

"Moral insanity" no defence.

§ 123. But there are phases of insanity to which even this attribute of "diminished" responsibility cannot with any justice be applied. That the so-called "moral" insanity (*i. e.* a supposed condition in which the *moral* system is insane but the *mental* sane) is not one of these phases, will be hereafter abundantly shown.[2]

Otherwise with insane delusions.

§ 124. But it is otherwise with insanity accompanied with delusions of such a character that the patient believes he is authorized by superior authority to dispense with the law of the land, and with insanity one of whose elements is an impulse to commit crime which the reason is unable to resist. If there be such phases of insanity as these, it is clear that their subjects are not responsible to the ordinary processes of penal justice. Yet such patients the "right and wrong" test might pronounce sane. In such cases, therefore, this test cannot be exclusively applied.

[1] See *infra*, §§ 151, 200.

[2] See *infra*, §§ 163, 189, 533, 567.

2. *When the defendant is acting under an insane delusion as to circumstances, which, if true, would relieve the act from responsibility, or where his reasoning powers are so depraved as to make the commission of the particular act the natural consequence of the delusion.*

[*For several valuable medico-juridical opinions in cases of alleged delusions, see the third edition of this work, Appendix,* §§ 833, 834, 837, 843.]

§ 125. The answer of the English judges on this point requires special comment. The question propounded to them in this respect was, "If a person, under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?" "To which question," they replied, "the answer must of course depend on the nature of the delusion; but, making the same assumption as we did before, namely, that he labors under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility, as if the facts with respect to which the delusion exists, were real. For example: if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was, that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

In England delusions may be a defence.

§ 126. So far as the law thus stated goes—and it is stated with extreme caution—it has been always recognized as binding in this country. Even where there is no pretence of insanity, it has been held in one state, that, if a man, though in no danger of serious bodily harm, through fear, alarm, or cowardice, kill another under the impression that great bodily injury is about to be inflicted on him, it is neither manslaughter nor murder, but self-defence;[1] and though this proposition is too broadly stated, as is remarked by Bronson, J., when commenting on it afterwards in New York, and should be so qualified as to make it necessary that there should be facts and circumstances

And so in this country.

[1] Grainger *v.* State, 5 Yerg. 459.

existing which would lead the jury to believe that the defendant had reasonable (in proportion to his own lights) grounds for his belief, yet with this qualification it is now generally received.[1] And, indeed, as shown by Mr. Justice Bronson, in the case just noticed, after the general though tardy acquiescence in Selfridge's case, where the same view was taken as early as 1805, by Chief Justice Parker, of Massachusetts, and after the almost literal incorporation of the leading distinctions of the latter case in the revised statutes of New York, as well as into the judicial system of most of the states, the point must be considered as finally at rest. Perhaps the doctrine, as laid down originally in Selfridge's case, would have met with a much earlier acquiescence had not the supposed political bias of the court in that extraordinary trial, and the remarkable laxity shown in the framing the bill and in the adjustment of bail, led to a deep-seated professional prejudice which struck at even such parts of the charge as were indisputably sound.[2]

[1] Shorter *v.* People, 2 Comst. 193, 202; 4 Barb. 460; People *v.* McLeod, 1 Hill, 377; People *v.* Pine, 2 Barb. 566; State *v.* Scott, 4 Ired. 409; Roberts *v.* State, 3 Ga. 310; Monroe *v.* State, 5 Ga. 85; Com. *v.* Rogers, *supra*. See generally Wh. Cr. L. 8th ed. §§ 38 *et seq.*, for other cases. See also Sloo's case, rep. 15 Am. Journ. Ins. 33; McFarland's case, 8 Abb. N. Y. Pr. N. S. 57.

[2] In another work (Wharton's Cr. L. 2d ed. 390; 8th ed. § 38), the present writer went into a critical examination of Selfridge's case, and advanced the opinion that the verdict, as well as the preliminary proceedings, were inconsistent with a just appreciation of human life, and with the dignity of public justice. This view is by no means retracted; and the gradual development of the political correspondence of those days shows that an approval of Selfridge's course—the shooting down by a man of thirty of a lad of eighteen, then an undergraduate in Harvard College, because the latter thought proper to suppose that the former, whose father he had just posted, might be ready to avenge the insult—was made a party test. Indeed, John Adams (Cunning. Cor. 70) tells us that "the great political parties in the state were arranged under their respective standards on the simple question of the guilt or innocence of an individual under a criminal accusation." But it is due to the excellent jurist who presided at the trial to say that, however, in the reception and adjustment of bail—two thousand dollars—he may have been influenced by those political heats to which even the bench in those times was subject, his charge is a fair statement of the English common law, as adapted to our social condition. And, however great may have been the zeal with which the case has been assailed, it is now impossible to refuse to recognize it as having been largely and definitely influential in settling this branch of American jurisprudence.

§ 127. Delusions to constitute a defence must be objective as distinguished from subjective. They must be delusions of the senses, or such as relate to facts or objects, not mere wrong notions or impressions; and the aberration in such case must be mental, not moral, so as to affect the intellect of the individual. It is not enough that they show a diseased or a depraved state of mind, or an aberration of the moral feelings, the sense of right and wrong continuing to exist, although it may be in a perverted condition. To enable them to be set up as a defence to an indictment for a crime, they must go to such crime objectively; *i. e.*, they must involve an honest mistake as to the object at which the crime is directed.[1]

Delusions must be objective.

§ 128. The distinction before us may be illustrated by Levett's case, which has never been questioned, and which has been sanctioned by the most rigid of the common law jurists, where it was held a sufficient defence to an indictment for murder, that the mortal blow was struck by the defendant under the delusion that the deceased was a robber, who had entered the house.[2] The delusion was objective, and therefore a defence. Had the delusion been merely subjective—*i. e.* an unfounded prejudice—it would have been no defence.

Illustrated by Levett's case.

§ 129. In none of the cases which have just been noticed, is the *actual* existence of danger an essential ingredient, and certainly, as the intentions of an assailant are incapable of positive ascertainment, such a danger can never be absolutely shown to exist. It is true, that, when the point has not been directly before the judicial mind, *dicta* have been thrown out to the effect that the danger must be such as to alarm a reasonable man; but, whenever the requisite state of facts has been presented, courts have not hesitated to say that the danger must be estimated, not by the jury's standard, but by that of the defendant himself. Thus, an enlightened and learned judge in Pennsylvania, one who would be among the last to weaken any of the sanctions of human life, directed the jury that they should take into consideration "the relative characters, as individuals," of

Delusion to be determined from defendant's standpoint.

[1] R. *v.* Burton, 3 F. & F. 772; R. *v.* Townley, 3 F. & F. 839; see also *infra*, §§ 165, 170.

[2] Levett's case, Cro. Car. 438, 1 Hale, 42, 474, Wharton's Cr. L. 8th. ed. § 38.

the deceased and the defendant, and, in determining whether the danger really was imminent or not, to inquire "whether the deceased was bold, strong, and of a violent and vindictive character, and the defendant much weaker, and of a timid disposition." And to the same effect will be found cases in other American courts elsewhere more particularly noticed.[1]

So as to delusion as to danger.

§ 130. If, therefore, a delusion that a party is in danger, whether such delusion be the result of insanity or of physical causes, is a justification of violence adequate to remove the supposed danger—and the answer of the English judges on this point corresponds with our own—it is difficult to avoid the conclusion, that a delusion as to the amount of force necessary to obviate the imagined attack should be equally potent. Thus, for instance, it is stated by the English judges, that if the party is under an insane delusion that the deceased is about to take his life, and he kills him to prevent it, he is to be exempt from punishment. The gist of this position consists in the *delusion*. If, therefore, by an insane delusion, or *depravation* of the reasoning faculty, the defendant insanely believes, either that the imagined evil is so intolerable as to make life-taking necessary or justifiable in order to avert it, or that, while the evil is of a lesser grade, life-taking is an appropriate and just way of getting rid of it, the same reasoning applies. The principle may logically be stated thus:—

1. Objective delusion exempts from punishment the perpetrator of an act committed under its influence.

2. The belief, unfounded in fact, that a party is in immediate danger of life from another, is such a delusion.

3. Therefore, a party committing homicide under such delusion, is not liable to punishment.[2]

§ 131. The minor premise, it will at once be seen, may be varied, without weakening the conclusion, by inserting in its place

[1] See Wh. Cr. L. 8th ed. § 39; Wh. on Hom. § 490.

[2] It is important that by "punishment," as here used, should be understood such punishment as is inflicted on persons of sound mind. It is essential, however, to the policy of the present more humane mode of treatment for the insane, that, in all cases where a party is acquitted *on ground of insanity*, strict confinement should be directed, in such a way as will exempt the community from any probable recurrence of such delirious outrages. This will hereafter be more fully considered: *infra*, § 775.

any insane delusion, the existence of which would deprive the act of guilty consciousness. That an insane delusion, that the party attacked is not a human being, will have this effect, even though the party himself knows when committing the act that he is doing wrong, and is violating the laws of the land, is illustrated by Lord Erskine, in a well-known case: "Let me suppose," he said, "the character of an insane delusion consisted in the belief that some given person was any brute animal, or an inanimate being (and such cases have existed), and that, upon the trial of such a lunatic for murder, you, being on your oaths, were convinced, upon the uncontradicted evidence of one hundred persons, that he believed the man he had destroyed to have been a potter's vessel; that it was quite impossible to doubt that fact, although to other intents and purposes he was sane—answering, reasoning, acting as men not in any manner tainted with insanity converse and reason and conduct themselves. Suppose, further, that he believed the man whom he destroyed, but whom he destroyed as a potter's vessel, to be the property of another, and that he had malice against such supposed person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious; and that, in short, he had full knowledge of all principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of the disease, he was ignorant of the relation in which he stood to the man he had destroyed, and was utterly *unconscious* that he had struck at the life of a human being?"[1]

So as to delusion as to the party attacked being a human being.

§ 132. An instance of an hallucination, founded on auricular deception, is given in Charles Brockden Brown's novel of Wieland, and is based on facts at the time well known in Philadelphia. A man of excessively morbid temperament is so wrought up by ventriloquism, as to believe himself under supernatural command to kill his wife. He does so under the stress of what he conceives to be a pure legal necessity. A similar case may be supposed in a sincere believer in spirit-rapping, who is ordered by the medium to commit a violation of the law. In this case the medium is the principal in the first degree, but the actual perpetrator of the act, under the present condition of

So as to delusion as to supernatural command.

[1] Winslow on Plea of Insanity, 6.

the law, is entitled to a judicial affirmation of insanity. Similar delusions in cases of sleep-drunkenness have been held to confer irresponsibility. The case is like that of an executioner executing the wrong person through a mistake in the warrant. If there is negligence, the executioner is liable for negligent homicide. If there is no negligence, then it is a case of misadventure, supposing the court issuing the warrant to have had jurisdiction.[1] Another line of illustration may be found in those cases in which officers of justice, in endeavoring to quell a riot, kill by mistake an innocent by-stander.[2]

Guilty consciousness may be consistent with irresponsibility. English rule to this effect.

§ 133. A man fancies himself to be the Grand Lama, or Alexander the Great, and kills another for an invasion of his sovereignty. He knows he is doing wrong; perhaps, from a sense of guilt, he conceals the body; he may have a clear perception of the legal consequences of the act. According to Mr. Wigan, such an association of a consciousness of the objective guilt and consequences of an act, with an insane delusion as to its subjective relation, is readily explained on the principle of the duality of the human mind; but, however this may be, it is a matter in which all observers agree that the lunatic is, in most instances, conscious of the moral relations of his conduct.[3] Nor, even under the severe tests of the older English text writers (who have, by their failure to reach this point, demonstrated how dangerous it is, with our imperfect experience, to attempt to codify or dogmatize the laws in a few absolute propositions), has this truth evaded the practical recognition of the courts. Thus, in a case where it was proved that the defendant had taken the life of another under the notion that he was set about with a conspiracy to subject him to imprisonment and death, Lord Lyndhurst, while quoting, with apparent entire acquiescence, Hale's doctrine, as affirmed by Sir James Mansfield in Bellingham's case, felt himself at liberty to tell the jury that they might "acquit the prisoner on the ground of insanity, if he did not

[1] See Wh. Cr. L. 8th ed. § 462.

[2] Wh. Cr. L. 8th ed. § 120.

[3] Wigan on Insanity, etc., London, 1844, 65; Winslow, Plea of Insanity, 16; Ray, Med. Jur. of Ins. § 17; Siebold, Gericht Med. § 219; Pinel, Traité sur alienation mentale, 2d ed., Par. 1809, 156; Riel, Fieberlehre, 4 Bd. 396; Groos, Die Lehre von der Mania sine Delirio, Heidelberg, 1830; De Boismont on Halluc., Phil. 1853, 506.

know, when he committed the act, what the effect of it was with reference to the crime of murder." Now, an acquittal would be easy enough if it be necessary, in order to create responsibility, that the party should know the effect of the act with reference to a question whose meaning, even to the court itself, appears to have been enveloped in so much mist. But there can be no doubt, after careful examination of the whole case, that the point Lord Lyndhurst decided was, that a man who, under an insane delusion, shoots another, is irresponsible when the act is the product of the delusion. Such, indeed, on general reasoning, must be held to be the law in this country, and such will it be held to be when any particular case arises which requires its application. The fact that against this view militate certain expressions—*obiter dicta*—in recorded opinions, as well as in the answers of the English judges, will not prevent its practical recognition, any more than Lord Lyndhurst was prevented, by the first class of authorities, from advising the acquittal of Offord, and afterwards maintaining that the acquittal was consistent with the very precedents now cited against it.[1]

§ 134. In America, the principle is too well settled to admit of dispute. "Monomania," said Chief Justice Shaw, in 1844,[2] in

[1] In People *v.* Coleman, N. Y., December, 1881, Judge Davis charged the jury as follows: "In this state the test of responsibility for criminal acts, where insanity is asserted, is the capacity of the accused to distinguish between right and wrong at the time and with respect to the act which is the subject of inquiry." He further said that the question for the jury to determine is "whether at the time of doing the act the prisoner knew what she was doing and that she was doing a wrong; or, in other words, did she know that she was shooting at the deceased, and that such shooting was a wrongful act?" The judge further said: "No imaginary inspiration to do a personal or private wrong, under a delusion, a belief that some great public benefit will flow from it, where the nature of the act done and its probable consequences, and that it is in itself wrong, are known to the actor, can amount to that insanity which in law disarms the act of criminality. Under such notions of legal insanity life, property, and rights, both public and private, would be altogether insecure, and every man who, by brooding over his wrongs, real or imaginary, shall work himself up to an irresistible impulse to avenge himself or his friend or his party, can with impunity become a self-elected judge, jury, and executioner in his own case, for the redress of his own injuries or the imaginary wrongs of his friends, his party, or his country. But, happily, that is not the law, and whenever such ideas of insanity are applied to a given case as the law (as too often they have been), crime escapes punishment, not through the legal insanity of the accused, but through the emotional insanity of courts and juries."

[2] Com. *v.* Rogers, 7 Metc. 500.

So in America.

an opinion hereafter to be more fully quoted, "may operate as an excuse for a criminal act," when "the delusion is such that the person under its influence has a real and firm belief of some fact, not true in itself, but which, if it were true, would excuse his act; as where the belief is that the party killed had an immediate design upon his life, and under that belief the insane man kills in supposed self-defence. *A common instance is where he fully believes that the act he is doing is done by the immediate command of God, and he acts under the delusive but sincere belief that what he is doing is by the command of a superior power, which supersedes all human laws and the laws of nature.*"

Distinction between objective and subjective delusions.

§ 135. We have already noticed the distinction between objective delusions (*i. e.*, visual or other sensual mistakes), and subjective delusions (*i.e.*, delusions as to matters of personal duty). As to the first, we have seen that it is a defence if a person non-negligently does an act which, if his senses had not been mistaken, would not have been an infraction of the law. With regard to subjective delusions, we must take another test. Such delusions are no defence unless insane.

Where reason can dispel subjective delusions, responsibility exists.

§ 136. If there be reason enough to dispel the delusion; if the defendant obstinately refuses, under such circumstances, to listen to arguments by which the delusion could be dispelled; if, on the contrary, he cherishes such delusion, and makes it the pretext of wrongs to others, then he is responsible for such wrongs. Thus, in a case of homicide in Delaware, in 1851, the deceased being the defendant's wife, the defence was delusion consisting in a belief that his wife was untrue to him, that his children were begotten by his wife's intercourse with another, and that sundry conjurations were being practised upon him, and the evidence showed that he was a shrewd and wealthy business man, the court charged the jury that if a person, otherwise rational, commit a homicide, though affected by delusions on subjects with which the act is connected, he is criminally responsible, if he were capable of the perception of consciousness of right and wrong as applied to the act, and had the ability through that consciousness to choose by an effort of the will whether he would do the deed.[1]

[1] State *v.* Windsor, 5 Harr. 512. The charge in this case cannot be complained of. The verdict of the jury, however, on the facts hereafter exhi-

§ 137. The test, therefore, to which we are led is, was the delusion pleaded as a defence the delusion of an insane person? If not, he has reason enough to dispel or correct it; and his refusal to do so does not invest him with irresponsibility. Thus the Mormon prophets claim, it is said, a direct revelation permitting them to practise polygamy. Would they be permitted to plead their delusion in this respect as a bar to an indictment? Certainly not. And the reason is that they are shrewd, sane men, and must, therefore, be held responsible for their delusions.[1]

Subjective delusions must be insane to destroy responsibility.

On the other hand, cases have not been infrequent in which parents, charged with the homicide of their children, have been permitted to show that they acted under the stress of what they held to be a divine command; and, when it has been satisfactorily proved that such was their belief, they have been acquitted on the ground of irresponsibility.

§ 138. What is the reason of this difference? It is simply this: that in the first case there is no proof offered of insanity, and the defendants, in fact, are men whose shrewdness and business abilities show them to be eminently sane. In the other class of cases, there are no acquittals unless there is evidence of insanity *aliunde*. A sane man who kills his child under the stress of a supposed revelation, is as much responsible to penal justice as is the Mormon who, under a similar plea, commits bigamy. The question in each case is, was the defendant *sane?* Had he reason enough to know what the law of the land was, and to know he must not disobey it? If he had, he must bear the penalty of his disobedience. It is true that such insanity may be presumed to some extent from the nature of the act. Where an affectionate father kills his child, the presumption is strong, and requires little additional proof. In other cases, where the act is simply the gratification of passion, the presumption amounts to nothing. But in either case, to entitle the delusion to be a defence, insanity must, by some mode of proof, be made out.

And proved to be so.

§ 139. If, rejecting this view that general sanity is the test, we say that the existence of a delusion by a sane person makes that

bited, cannot be sustained; as the defendant's mind seems to have been so far shattered as to be without the power of dispelling the delusions.

[1] Wh. Cr. L. 8th ed. §§ 84, 850, 1682, 1715; citing U. S. *v.* Reynolds, 98 U. S. 145.

Where party is otherwise sane, responsibility remains.

person irresponsible, we expand the definition of irresponsibility, not only dangerously, but unphilosophically. Multitudes of men whom it would be both absurd and mischievous to treat as irresponsible have apparent delusions or "fixed ideas." Several illustrations of this have been already introduced.[1] One or two others may now be added.

Illustrations.

§ 140. Morel (1869) tells us of a French judge, whose official character was marked by the most exemplary efficiency, who separated from his family, took a room in a hotel, in which he permitted no visitors, and, when he went into the street, took great pains, in crossing the lines of the *trottoir*, lest he should, with such lines, make the form of a cross, which he held to be bad luck. Indeed, we would find abundant illustrations of the proposition before us, even if we should confine ourselves to the history of judges—men whose time is spent in weighing evidence and declaring law, and men who apply to others, as they render for themselves, responsibility for all moral acts. Lord Kenyon could never overcome his fear of poverty, and his nervous dread of spending even a farthing except for necessities. Of Lord Stowell, even after he had accumulated an enormous fortune, Sir Henry Holland, who attended him as physician, writes: "Lord Alvanley's description of him as a conceited Muscovy duck had an amusing personal reality about it, felt even by those who knew his high merits as a judge and master of international law. His house curiously illustrated the habits of the man, in its utter destitution of all the appliances of luxury and of comfort. The furniture was never either changed or cleaned. Year after year I wrote prescriptions there with the same solitary pen—the single one, I believe, in his possession, and rarely used by himself after his retirement from public business." Of Lord Erskine, Sir Henry Holland tells us that "his mind, too, when I knew him, was clouded by little foibles and superstitions. I can recollect a dinner at Sir S. Romilly's, where his agitation was curiously shown in his reluctance to sit down as one of thirteen at table, and by the relief he expressed when the fourteenth guest came in."[2] Lord Eldon labored under the delusion, that, even after he had really made up his mind,

[1] See *supra*, §§ 34–52; also *infra*, §§ 723–743.

[2] See also Lady Clementina Davies's Recollections of Society, vol. i. p. 10.

and had so expressed himself lucidly and conclusively, there was still ground for him to doubt; and this habit was the cause of great delay to suitors, and of great distress to himself. Lord Campbell tells us that Lord Lyndhurst was governed by the delusions of *physical*, and Lord Brougham by those of *intellectual* vanity; and more than once in Lord Brougham's life was "his mind clearly off its balance," and so wild and violent were at one time its perturbations, that it was considered necessary to place him in seclusion.[1] Among American judges, analogous illustrations may be found. Judge Brackenridge, of Pennsylvania, is reported to have, on a hot day, when holding court at Sunbury, gradually taken off his clothes, till at last he was naked. Judge Baldwin, of the Supreme Court of the United States, was a hypochondriac. A distinguished New England judge, it is said, imagined that a dropsical affection under which he labored was a sort of pregnancy. Yet in none of these cases was insanity ever charged. And the reason is this, that, whatever may have been the delusions or "fixed ideas" of these eminent men, they had reason enough to conquer these delusions whenever this was necessary to avoid public censure. When they felt that they were beyond law, they would indulge their caprices. When they felt the pressure of law, then these delusions would be restrained. Thus Lord Chancellor Clare had, or feigned to have, so unconquerable an animosity to Curran, that he could not listen to that illustrious advocate. But when Curran met this by one of the most powerful invectives that the records of forensic eloquence preserve, the "irresistible impulse" was resisted. Lord Clare was not insane. He was simply a man of strong prejudices as well as of strong reason. When necessary—though only when necessary—reason would prevail.

§ 141. With the sane, therefore, so far from subjective delusion creating irresponsibility, it is irresponsibility that creates subjective delusion. Of this we might find many additional illustrations. A monk has an ecstatic vision. He tells the vision, and, instead of being rebuked, is admired; and visions speedily fill every monastic cell. Or a romantic poet, as was the case with so many in Germany when Napoleon left to German thought no other province than that of imagination,

Danger of assigning irresponsibility to delusion.

[1] Edinb. Rev., Apr. 1869. Camp. Brougham, p. 476.

imagines some heroic epoch of the past to which, like a troubadour knight, he consecrates his song. He is admired, and his ecstasies are imitated, until there springs up a whole school of Romanticists as wild as Don Quixote. Or, at a period of high religious enthusiasm, a woman breaks into hysteria. Instead of being put under medical care, she is injudiciously spoken of as exhibiting special religious feeling; and hysterical symptoms burst out on every side. The fancy of an individual becomes, if unrebuked by public opinion, the epidemic of an epoch.

Prior insanity a test.

§ 142. It being then accepted law that a delusion, by a sane person, does not make him irresponsible, let us inquire what, in cases of delusion, is the test of sanity. And here two distinct psychical conditions are to be scrutinized.

First, when the delusion is, as Dr. Liman describes it, the *residuum* of a prior insane state. Delirium has passed away, but the old disease still shows itself in the havoc it creates, sometimes in mental debility, sometimes in the derangement of the mechanism of association and perception, leading to chimeras, to absurd prejudices, if not to hallucinations. This state, however, as Griesinger, a very capable medical psychologist of late date (1871), argues, is not the restoration of the equilibrium of sanity. The patients are not what they were in a sane state, *plus* some errors or delusions. They are thoroughly changed. There has been such a shock to the structure of the mind that, although it is apparently calm, it does not act with uniformity. The defect is internal; something like that of a clock whose works have been disturbed, and which, after being repaired, may strike a series of hours accurately, and then go wrong. The mere *presence* of a delusion, it is true, might not by itself prove the imperfectness of the recovery. But it is otherwise when the delusion is harbored, and when the patient has not power to throw it off. Thus it is that in such cases, the fact often is, not that the patient retains but a *single* insane delusion, but that an unsettled mind has taken the particular channel of this one delusion to pour itself out. A dam across one of our mountain streams is swept away, the stream first running over what is the lowest point in the dam's crest. The difficulty is, not the *lowness* of this point, but the height of the stream, which, if it had not rushed over this point, would soon have rushed

over another. Krafft-Ebing,[1] speaking from an experience of almost unequalled extent, tells us that the idea that a person may be sane generally, but insane as to some particular delusions, is as inconsistent with practical observations as it is with sound psychology. And Dr. Liman (1871) quotes a speaker in the Paris Academy, as saying that a diligent search in all the Paris hospitals would fail to bring to light a single case of "pure monomania" of this class.[2]

§ 143. Secondly, however, there is a class to which Liman calls attention, in whom insanity has not been established, and yet as to whom, when delusions exist, the existence of such delusions may present a strong presumption of coming disease. This, he tells us, is peculiarly the case with those with hereditary disposition to sanity, with hypochondriacs, with "candidates" for paralysis. It is found that with such persons "fixed ideas," as they are called, may exist, without developing into insanity, during a whole lifetime, because the patient can control them, because he is capable of recognizing them as prejudices, and because they have not become a part of *himself*. He cannot, it is true, dismiss the delusion, but he is conscious of its falsity, and hence, if necessary, can nerve himself against its influence. But, when this power over the delusion passes away; when the delusion not only cleaves to but controls the mind; when it is not simply a ray of eccentricity, but a radiating centre itself from which a series of subordinate false lights emanate; when the delusion, *e. g.*, jealousy or fear, becomes a passion, growing on the mind on which it feeds, cancerously absorbing into itself the mind's true life, and sending forth over the system its own streams of disease; when there are, in particular, sympathetic physical affections which either induce or respond to the mental disturbance, then we may infer that the patient is mastered by the delusion instead of being its master. In this class of cases the delusion is the commencement, in the former, the sequence, of settled insanity.[3]

So of hereditary.

§ 144. As a natural result of the view above expressed, it is

[1] Vierteljahrschrift f. Gericht. Med. xiii. 1.

[2] See fully, *infra*, §§ 531–567, and *supra*, § 49.

[3] See the subject of delusions discussed at large, *infra*, §§ 723–743.

Proof that delusion is sane, competent.

allowable for the prosecution, when an *insane* "delusion" is set up for a defence, to offer evidence to show that the "delusion" was sane, in other words, was an opinion which ordinary processes of reasoning might have produced.[1]

Delusion unconnected with crime no defence.

§ 145. In accordance with the analogies already laid down,[2] and in obedience to the general line of American authority, we must also hold that a delusion, even by a person whose mind is so unsound that the delusion becomes involuntary and incorrigible, is no defence to an indictment for a crime not its immediate product.[3] Of this Dr. Casper gives us a

[1] Com. *v.* Haskell, 2 Brewst. 491. See this viewed psychologically, *infra*, §§ 393, 723, 743.

[2] *Supra*, §§ 34–60.

[3] 1 Wh. Cr. L. 8th ed. § 41; State *v.* Lawrance, 57 Me. 574; State *v.* Huting, 21 Mo. 464; Bovard *v.* State, 30 Miss. 600; Com. *v.* Mosler, 4 Penn. St. 264; State *v.* Gut, 13 Minn. 341. In New York, in Freeman's case, Beardsley, C. J., said, that "A state of general insanity, the mental powers being wholly perverted or obliterated, would necessarily preclude a trial; for a being in that deplorable condition can make no defence whatever. Not so, however, where the disease is partial, and confined to one subject, other than the imputed crime and contemplated trial. A person in this condition may be fully competent to understand his situation in respect to the alleged offence, and to conduct his defence with discretion and reason. Of this the jury must judge, and they should be instructed, that, if such is found to be his condition, it will be their duty to pronounce him sane. In the case at the bar, the court professed to furnish a single criterion of sanity, that is, a capacity to distinguish between right and wrong. This, as a test of insanity, is by no means invariably correct; for, while a person has a very just perception of the moral qualities of most actions, he may, at the same time, as to some one in particular, be absolutely insane, and consequently as to *this* be incapable of judging accurately between right and wrong. If the delusion extends *to the alleged crime*, or the contemplated trial, the party manifestly is not in a fit condition to make his defence, however sound his mind may be in other respects; still, the insanity of such a person being only partial, not general, a jury, under a charge like that given by the court below on this case, might find the prisoner sane, for in some respects he would be capable of distinguishing between right and wrong. Had the instruction been, that the prisoner was to be deemed sane, if he had a knowledge of right and wrong in *respect to the* crime with which he stood charged, there would have been but little fear that the jury could be misled, for a person who justly apprehends the nature of a charge made against him, can hardly be supposed to be incapable of defending himself in regard to it in a rational way. At the same time it would be well to impress distinctly on the minds of jurors, that they are to gauge the mental capacity of the prisoner, in order to determine whether he is so far sane as to be competent in mind to make his defence, if he has one; for, unless his faculties are equal to the task, he is not in a fit

striking illustration. A merchant, named Schraber, was convicted of cheating by false pretences and false information, and was sen-

condition to be put on his trial. For the purpose of such a question, the law regards a person thus disabled by disease as *non compos mentis*, and he should be pronounced unhesitatingly insane within the true extent and meaning of this statute.

"Where insanity is interposed as a defence to an indictment for an alleged crime, the inquiry is always brought down to the single question of a capacity to distinguish between right and wrong at the time when the act was done. In such case, the jury should be instructed, that 'it must be clearly shown that, at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of *the act* he was doing; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury, on these occasions, has generally been whether the accused, at the time of doing the act, knew the difference between right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not deemed so accurate, when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to *the very act* with which he is charged.' This is the rule laid down by all the English judges but one, in the late case of McNaghten, while pending in the house of lords. (10 C. & F. 200.) In the case of Oxford, Lord Denman, C. J., charged the jury in this manner: 'The question is, whether the prisoner was laboring under that species of insanity which satisfies you that he was quite unaware of the nature or character and consequences of the act he was committing; or, in other words, whether he was under the influence of a diseased mind, and was really unconscious, at the time he was committing the act, that it was a crime.' The insanity must be such as to deprive the party charged with crime, of the use of reason in regard to the *the act* done. He may be deranged on other subjects, but, if capable of distinguishing between right and wrong in the particular act done by him, he is justly liable to be punished as a criminal. Such is the undoubted rule of the common law on this subject. Partial insanity is not, by that law, necessarily an excuse for crime, and can only be so where it deprives the party of his reason in regard to the act charged to be criminal. Nor, in my judgment, was the statute on this subject intended to abrogate or qualify the common law rule. The words of the statute are: 'No act done by a person in a state of insanity can be punished as an offence.' The clause is very comprehensive in its terms, and at first blush might seem to exempt from punishment every act done by a person who is insane *upon any* subject whatever. This would, indeed, be a mighty change in the law, as it would afford absolute impunity to every person in an insane state, although his disease might be confined to a single and isolated subject. If this is the meaning of the statute, jurors are no longer to inquire whether the party was insane 'in respect to the very act with which he is charged,' but whether he was insane in regard to any act or subject whatever; and, if they find such to have been his condition, render a verdict of not guilty. But this statute is not so understood

tenced to imprisonment for six years. On an application to the court to reconsider the sentence, insanity was set up, and it appeared that the prisoner either felt or feigned a belief that he was a legitimate son of the late Duke Charles of Mecklenburg Strelitz; which certainly, if not a mere fiction, was an insane delusion. Much reason existed to believe that the whole thing was simulated; but, independently of this, the court was clear that, as the mania, if real, had no connection with his crime, it formed no ground for a revision of the sentence.[1]

3. *Where the defendant, being insane, is forced by a morbid and irresistible impulse to do the particular act.*

[*As to the alleged "monomaniac" impulses, see infra*, §§ 567–679. *As to the question of motive, infra*, §§ 401–404.]

§ 146. Here, at the outset, we are arrested by a difficulty of nomenclature. What is "irresistible impulse" that is here declared to be a defence? And, in order to clear the question at the outset from ambiguities, it is proper to remark—

Irresistible impulse distinct from moral insanity and passion.

(*a*) "Irresistible impulse" is not "moral insanity," defining "moral insanity" to consist of insanity of the moral system, coexisting with mental sanity. "Moral insanity," as thus defined, has no support, as will hereafter be seen,[2] either in psychology or law.

(*b*) Nor is "irresistible impulse" convertible with passionate propensity, no matter how strong, in persons not insane.[3] In other words, the "irresistible impulse" of the lunatic, which confers irresponsibility, is essentially distinct from the passion, however violent, of the sane, which does *not* confer irresponsibility. As this dis-

by me. I interpret it as I should have done if the words had been, 'no act, done by a person in a state of insanity in respect to such act, can be punished as an offence.' The act, in my judgment, must be an insane act, and not merely the act of an insane person. This was plainly the rule before the statute was passed, and, although that took place more than sixteen years since, I am not aware that it has, at any time, been held or intimated by any judicial tribunal, that the statute had abrogated, or in any respect modified, this principle of the common law." Freeman *v.* People, 4 Denio, p. 27.

[1] See appendix to 3d ed. of this work, § 834.

[2] *Infra*, §§ 163–189, 531–567.

[3] See *infra*, §§ 403–478.

tinction is of great importance, we will now notice the reason on which it rests.

§ 147. (1) Supposing the mind to be sane, and that there is a capacity of judging between right and wrong, there is psychologically no impulse which the law can treat as irresistible. The will is either free, which settles the question at once; or it is directed by the strongest motives, as the necessitarian holds. Now, taking the latter hypothesis, the question arises, supposing the will to follow by necessity the strongest motive, whether it is just to punish the wrong-doer for such necessary act. That it is, is affirmed by the leading representatives of the necessitarian school. "It is said," says Mr. Bain,[1] "that it would not be right to punish a man unless he were a free agent; a truism, if by freedom is meant only the absence of outward compulsion; *if in any other sense, a piece of absurdity. If it is expedient to place restrictions upon the conduct of sentient beings, and if the threatening of pain operates to arrest such conduct, the case for punishment is made out.* We must justify the institution of law, to begin with, and the tendency of pain to prevent the actions that bring it on, in the next place. . . . Granting these two postulates, punishability (carrying with it, in a well constituted society, responsibility), is amply vindicated. . . . Withdraw the power of punishing, and there is left no conceivable instrument of moral education. It is true that a good moral discipline is not wholly made up of punishment; the wise and benevolent parent does something, by the methods of allurement and kindness, to form the virtuous dispositions of his child. *Still, we may ask, was ever any human being educated to the sense of right and wrong without the dread of pain accompanying forbidden actions?* It may be affirmed with safety, that punishment or retribution, in some form, is one-half of the motive power to virtue in the very best of human beings, while it is more than three-fourths in the mass of mankind." Now, erroneous as is Mr. Bain's position that the primary ground of punishment is prevention to be effected by fear,[2] there can be no question that on the necessitarian hypothesis his reasoning is sound.

With the sane no impulse irresistible.

[1] Mental and Moral Science, London, 1868, p. 404

[2] See this shown in Wh. Cr. L. 8th ed. §§ 1 *et seq.*

§ 148. Mr. J. S. Mill, in his examination of Sir W. Hamilton's philosophy, supposes the case of a race of men whose hereditary tendencies to mischief are as great and uncontrollable as those of lions and tigers; than which no case brought up by the advocates of the unpunishability of those subject to irresistible propensities could be more strong. Having supposed such men, he asks whether we would not treat them precisely as we would a wild beast, even though we supposed them to act necessarily. The highest theory of fatalism, he infers from this, is not inconsistent with the infliction of penalties on the offender. The question that arises, then, is, is such punishment just? Can we justly punish a man for that which he cannot help? And he argues that we certainly can, if announcing beforehand that such offenders are to be punished, and supporting the announcement by inflexible and uniform execution, is the way to keep them from committing the obnoxious act. If the end—the prevention of crime—is justifiable, then the necessary means for the prevention of crime are also justifiable. And despotic as is the assumption that punishment is to be inflicted, not as a matter of justice in obedience to a preannounced law, but as a matter of policy irrespective of deserts, the conclusion legitimately follows from Mr. Mill's premises.

Punishment necessary to prevent crime.

§ 149. In cases of low mental and moral culture, such as those just supposed, the will, when on the brink of some forbidden act, is swayed by two conflicting motives, passion and fear. Fear, in such cases, is the only check on passion. If it is removed, passion has no remaining barrier in its way. We may notice this in the case of young children, who are often deterred from wrong acts in proportion as the fear of punishment is impressed on their minds. Nor does this characteristic belong only to children or to persons of low grade of intelligence. It was frequently said of Napoleon I., and of General Jackson, that each knew when he could with impunity give way to bursts of apparently irresistible rage; but that each knew when this rage was to be controlled. The cases are not infrequent in which men, presuming on the cowardice or feebleness of their intended victim, rush into violence which they would readily have restrained had they known that they would have received blow for blow. *Wer sich zum Schaf macht*, is a German proverb, *den frisst der Wolf;* or, as we may

Fear a check on passion.

paraphrase it, government, by becoming a sheep, creates the social wolf. The state which declares that no irrepressible passion shall be punished evokes the irrepressible passion it exempts. Fear is a salutary check on passion; and punishment must be applied by government with such even hand that fear will be real and reasonable. Of course, as Mr. Mill well remarks, this does not apply to cases where the offender has not reason to understand that the guilty act is punished by the state, nor does it apply when he is laboring under an insane delusion which sets up what he holds to be a higher law.

Irresistibility impossible to determine.

§ 150. (2) There is no means of determining what constitutes "irresistibility."[2] If a man has reason enough to deplore a criminal desire, and power enough

[1] "Irresistible impulses" are recognized by all philosophers, profane and sacred. Ovid, in a well-known passage, thus speaks :—

Sed trahit invitam nova vis, aliudque cupido,
Mens aliud suadet: video meliora proboque,
Deteriora sequor.

And so St. Paul: "The good that I would I do not; but the evil which I would not, that I do. . . I see another law in my members, warring against the law of my mind, and bringing me into captivity to the law of sin which is in my members." No doubt the impulse, viewed thus as an insulated force, is irresistible in producing the sin. But, on the other hand, reason, in its right sense, is irresistible in suppressing the impulse. Reason may operate either through love or fear; and hence it is incumbent on all systems of ethics to cherish these motives. No doubt it is a law of our nature that the will follows the strongest motive. But the irresistibility of the inferior motive, when unrestrained, is the crowning reason for promulgating and enforcing superior motives, as modes of restraining.

Griesinger doubts whether impulses are irresistible even among the *insane*. "Whether, and to what extent, certain directions of the will and impulses in the insane, particularly such as lead to criminal acts, are irresistible, is a question which can scarcely ever be answered with certainty. Few of the acts of the insane have the character of forced, purely automatic movements; in mania also, according to the testimony of individuals who have recovered, many of the wild desires could often be restrained; the criminal deeds of the insane are not generally instinctive. The loss of freewill (or, if we choose, irresponsibility), therefore, seldom depends on the fact of inability to have abstained from the act committed, or that the normal conditions of volition have been completely suspended. The causes of this loss of freewill chiefly depend on quite a different cause, they depend on violent excitation of the emotions, or on incoherence, on false reasoning proceeding from delirious conceptions, hallucinations, etc., and on the circumstances mentioned in § 27."—*Griesinger's Mental Pathology*, Sydenham Ed. (1867), § 47.

[2] See *infra*, § 585.

to take steps to prevent its gratification, the law holds him responsible if he does not take such steps. This is recognized in those familiar cases in which it is held, that, where a man whose passions are aroused kills an assailant, the act is not excusable unless it appears that the accused had no means of retreat. If the "monomaniac" can retreat from his "monomania," it ceases to supply him with a defence.

Materialistic theory of volition incorrect.

§ 150*a*. (3) On the materialistic hypothesis, from whose advocates the theory of the non-responsibility for irresistible impulses springs, all volitions are the result of material influences; and hence there is no volition that may not be viewed as irresistible, and no crime that is not a physical disease. But the answer is, that the same reasoning that applies to prevent punishment for any particular crime would apply to prevent punishment for any crime whatsoever.

Passion is a mitigating element.

§ 151. It should be remembered, however, that while "irresistible impulse," the mind being sane, is no *defence* to crime, yet violent passion is to be taken into account as a mitigating element, and that the peculiar temperament of the offender is to be gauged for the purpose of estimating whether the provocation was such as to create hot blood, and whether there was adequate cooling time. A sane person may, from epilepsy, or from prior insanity, or from nervous or physical derangements, or from hereditary taint, be peculiarly susceptible to excitement; and, as the law treats assaults committed in hot blood as of a lower grade than those committed deliberately, this excitability may properly be considered in determining whether the blood at the time was hot. That, psychologically, this varies with temperament is well known. The ordinary signs of passion (acceleration of arterial pulse, congestive flushings, increased activity of secretions and excretions) are different with different patients. Hence epileptic, nervous, and cerebral diseases, and hereditary tendency, may be put in evidence to lower the grade of the offence, though they do not amount to insanity. In so doing, we but follow the authorities which declare that drunkenness, though no *defence* to crime, may be used to show that an assault was not deliberate.[1]

[1] *Supra*, § 122; *infra*, § 200; Wh. "monomaniac" impulses, *infra*, §§ 567–679. Cr. L. 8th ed. § 47; see, as to alleged

§ 152. It being therefore settled that "irresistible impulse," to constitute a defence, must be that of a person otherwise insane, we proceed to consider the authorities that establish such impulse, under such conditions, as a defence. In doing so, it must be at the outset conceded that, by the English courts, this defence, as here stated, is rejected. No person, however insane, can, by the law as now (1882) expounded by those courts, be acquitted of a crime, if it appear to the satisfaction of the jury that he knew the nature and quality of the act he was doing, or, if he did not know it, if he knew that the act was wrong.[1] But, if, as hereafter will be shown, it is demonstrable that there sometimes is, among insane persons, an "irresistible impulse" to an act coexisting with a knowledge that it was wrong, then comes the question whether lunatics of this stamp are legally punishable for such acts. That they are not, the tendency of American authority is to maintain. And even in England we find Mr. Stephen, in his work on English Criminal Law[2]—a work as remarkable for philosophical symmetry as for legal accuracy—stating (1863) the questions to be, "in popular language, *Was it his act? Could he help it? Did he know it was wrong?*" He goes on further to say: "It would be absurd to deny the possibility that such (irresistible) impulses may occur, or the fact that they have occurred, and have been acted on. Instances are also given in which the impulse was felt and was resisted. The only question which the existence of such impulses can raise in the administration of criminal justice is, whether the particular impulse in question was irresistible as well as unresisted. *If it were irre-*

Authorities for defence of "irresistible impulse."

[1] A mere uncontrollable impulse of the mind, coexisting with the full possession of the reasoning powers, will not warrant an acquittal on the ground of insanity; the question for the jury being, whether the prisoner, at the time he committed the act, knew the character and nature of the act, and that it was a wrongful one. R. *v.* Barton, 3 Cox, C. C. 275—Parke.

Where a person is in a state of mind in which she is liable to fits of madness, it is for the jury to consider whether the act done was during such a fit, though there is nothing before or after the act to indicate it, and though there is some evidence of design and malice. R. *v.* Richards, 1 F. & F. 87.

The circumstance of a person having acted under an irresistible influence to the commission of homicide is no defence, if at the time he committed the act he knew he was doing what was wrong. R. *v.* Haynes, 1 F. & F. 666—Bramwell. See also Edmunds's case, *infra*, §§ 165–167.

[2] London, 1863, p. 91.

sistible, the person accused is entitled to be acquitted, because the act was not voluntary and was not properly his act. If the impulse was resistible, the fact that it proceeded from disease is no excuse at all."[1]

Instances of irresponsibility co-existing with guilty consciousness.

§ 153. To the illustrations adduced by others of the coexistence of a knowledge that an act was wrong with its commission under circumstances which confer entire irresponsibility, the present writer may be permitted to add one within the range of his own experience. A man named John Billman, who had been sent to the Eastern Penitentiary of Pennsylvania for horse stealing, murdered his keeper under circumstances of great brutality, and yet with so much ingenuity as to elude suspicions of his intentions and almost conceal his flight. He hung a noose on the outside of the small window which is placed in the door of the cells to enable persons outside to look in. He then induced the keeper, in order to look at something on the floor directly at the foot of the door, to put his head entirely through. The noose was then drawn, and but for an accident the man would have been suffocated. Notwithstanding this attempt, the same keeper was inveigled into the cell alone, a few days afterwards, on the pretence of Billman being sick, and was there killed by a blow on the head with a piece of washboard. Billman undressed him, changed clothes with him, placed him on the bed in such a position as to induce the general appearance of his being there himself, traversed in his assumed garb the corridor with an unconcerned air, addressed an apparently careless question to the gate-keeper, and sauntered listlessly down the street on which the gate opened. He was, however, soon caught; but his insanity was so indisputable that the prosecuting authorities, after having instituted a careful and skilful medical examination, became convinced of his irresponsibility, and united upon the trial in asking a verdict of acquittal on the ground of insanity. He was then remanded to confinement, under the Pennsylvania practice; and some time afterwards, when in a communicative mood, disclosed the fact of his having several years back murdered his father under circumstances

[1] See McFarland's case, 8 Abb. N. Y. Pr. N. S. 57. In Sir J. Stephen's testimony before the English Homicide Committee the same view is taken. Wh. Cr. L. 8th ed. § 45.

which he detailed with great minuteness and zest. Inquiries were instituted, and it was found that he had told the truth. The father had been found strangled in his bed; the son had been arrested for the crime; but so artfully had he contrived the homicide that he was acquitted through an alibi, got up by means of a rapid ride at midnight and a feigned sleep in a chamber into which he had clambered by a window. Here, then, was not only a sense of guilt, but a keen appreciation of the consequences of exposure, long harbored intention, and intelligent design.

§ 154. A well-known illustration of the same sense of accountability among lunatics, as a class, is to be found in an anecdote related by Dr. Winslow. When Martin set York Minster on fire, a conversation took place among the inmates of a neighboring lunatic asylum, having reference to this general topic. The question was whether Martin would be hanged, when, in the course of the conversation, one madman announced to the others the opinion, in which they all acquiesced, that Martin would not be hanged, because he was "one of themselves." It certainly will not be maintained that a consciousness of the legal relations of crime, such as this remark exhibited, confers responsibility where it does not otherwise exist.

§ 155. With these may be cited a leading case before Judge Story, in which that eminent jurist directed the acquittal of a young woman, who during puerperal insanity drowned her child, though there was no proof that she was not entirely conscious of the nature of the act.[1]

In the same class fall those cases in which a parent, insane with melancholy, kills his children, either in execution of some supposed divine command, or to save them from supposed future misery, knowing at the same time the illegality of the act.[2]

§ 156. The first case in which this question was gravely considered is that of Commonwealth *v.* Rogers, before the supreme court of Massachusetts, in the spring of 1844.[3] Chief Justice Shaw—whose conservative tendencies on the great sanctions of human life cannot be suspected—found himself, in preparing his charge, embarrassed by the conflict between

Opinion of Chief Justice Shaw.

[1] U. S. *v.* Hewson, 7 Bost. L. R. 361.

[2] *Supra*, §§ 132, 137; *infra*, §§ 529, 582, 636, 837, 839.

[3] 7 Metc. 500.

the dogmas of the older judges and the necessities of the particular case; and there is an evident struggle on his part to preserve as much as he could of the letter of the former and at the same time to establish a principle by which the latter could be properly respected. He begins—we cite from the authorized report—by laying down two propositions of great breadth. "In order to constitute a crime," he says, "a person must have intelligence and capacity enough to have a criminal intent and purpose; and, if his reason and mental powers are either so deficient that he has no will, no conscience, *or* controlling mental power, *or* if, through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for criminal acts. These extremes," he then proceeds to state, "are easily distinguished, and not to be mistaken. The difficulty lies between these extremes, in the cases of partial insanity, where the mind may be clouded and weakened, but not incapable of remembering, reasoning, and judging; or so perverted by insane delusion, as to act under false impressions and influences." To such cases—to those where the mind is not "incapable of judging," etc., and to those where it acts "under false impressions and influences"—and to such alone, he applies the "right and wrong" test; reserving it to a very small sphere of action, since the defence of insanity would scarcely be ventured where there was both a capacity to judge, reason, and remember, and a freedom from false "impressions and influences." Taking up the particular defence of monomania, which was that advanced in the case before him, he proceeds to state the law, with a liberality in entire accordance with the weight of medical authority. "This" (monomania) "may operate as an excuse for a criminal act in one of two modes. 1. Either the delusion is such that the person under its influence has a real and firm belief of some fact, not true in itself, but which, if it were true, would excuse his act: as where the belief is that the party killed had an immediate design upon his life, and under that belief the insane man kills in supposed self-defence. A common instance is where he fully believes that the act he is doing is done by the immediate command of God, and he acts under the delusive but sincere belief that what he is doing is by the command of a superior power which supersedes all human laws and the laws of nature. 2. Or this state of delusion indicates to an experienced

person that the mind is in a diseased state; that the known tendency of that diseased state of the mind is to break out into sudden paroxysms of violence, venting itself in homicide, or other violent acts toward friend and foe indiscriminately; so that, although there were no previous indications of violence, yet the subsequent act, connecting itself with the previous symptoms and indications, will enable an experienced person to say, that the outbreak was of such a character that, for the time being, it must have overborne memory and reason; that the act was the result of the disease and not of a mind capable of choosing; in short, that it was the result of uncontrollable impulse, and not of a person acted on by motives, and governed by will." . . . "Are the facts of such a character, taken in connection with the opinion of professional witnesses, as to induce the jury to believe that the accused was laboring for days under monomania, attended with delusion, and did thus indicate such a diseased state of the mind, that the act of killing the warden was to be considered an outbreak or paroxysm of disease, which for the time being overwhelmed and superseded reason and judgment, so that the diseased was not an accountable agent? If such was the case, the accused is entitled to an acquittal."

§ 157. In the fall of 1846, a similar defence was started before three of the judges of the supreme court of Pennsylvania, then holding an oyer and terminer in Philadelphia. In his charge to the jury, Chief Justice Gibson—a most able judge, thoroughly disciplined in and wedded to the common law, but at the same time endowed with a remarkable zest for and a mastery over collateral sciences—after, in the first place, vehemently repudiating the doctrine that partial insanity excuses anything but its direct results, and sliding, in reference to such cases, into the "right and wrong" tests, proceeds: "But there is a *moral or homicidal* insanity, consisting of an irresistible inclination to kill or to commit some particular offence.[1] There may be an unseen ligament pressing on the mind, drawing it to *consequences which it sees but cannot avoid*, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance. The doctrine

Of Chief Justice Gibson.

[1] The charge was oral, having been reported by the present writer, and but hastily revised by the judge himself, which may account for the want of literal exactness in this and other expressions.

which acknowledges this mania is dangerous in its relations, and can be recognized only in the clearest cases. It ought to be shown to have been habitual, or at least to have evinced itself in more than a single instance. It is seldom directed against a particular individual; but that it may be so, is proved by the case of a young woman who was deluded by an irresistible impulse to destroy her child, *though aware of the heinous* nature of the act. The frequency of this constitutional malady is fortunately small, and it is better to confine it within the strictest limits. If juries were to allow it as a general motive, operating in cases of this character, its recognition would destroy social order as well as personal safety. To establish it as a justification in any particular case, it is necessary either to show, by clear proofs, its contemporaneous existence evinced by present circumstances, or the existence of an habitual tendency developed in previous cases, becoming in itself a second nature."[1]

Of Judge Lewis.

§ 158. In a still earlier case in Pennsylvania, Judge Lewis, then presiding in Lycoming county, and afterwards Chief Justice of Pennsylvania, thus spoke: "Moral insanity" (not, however, the moral insanity of Pinel, but that which consists of "irresistible impulse") "arises from the existence of some of the natural propensities in such violence that it is impossible not to yield to them. It bears a striking resemblance to vice, which is said to consist in an undue excitement of the passions and will, and in their irregular or crooked actions leading to crime. It is therefore to be received with the utmost scrutiny. It is not generally admitted in legal tribunals as a species of insanity which relieves from responsibility for crime, and it ought never to be admitted as a defence, until it is shown that these propensities exist in such violence as to subjugate the intellect, control the will, and render it impossible for the party to do otherwise than yield. Where its existence is fully established, this species of insanity relieves from accountability to human laws. But this state of mind is not to be presumed without evidence, nor does it usually occur without some premonitory symptoms indicating its approach."[2]

[1] Com. *v.* Mosler, 4 Penn. St. 264; see *infra*, § 174.

[2] The same view was, some years after, repeated by the same enlightened and able judge; Lewis Cr. Law, 404; by Judge Edmonds (2 Am. Jour. of Ins.) and Judge Whiting (Freeman's Trial —Pamph.). In 1858, in John Freeth's

§ 159. In Illinois, in 1863, it was declared by the supreme court that a safe and reasonable test would be, that, whenever

case, tried before the Philadelphia oyer and terminer, Judge Ludlow charged the jury partly as follows :—

"Besides the kinds of insanity to which I have already referred, and which strictly speaking affect the mind only, we have moral or homicidal insanity, which seems to be *an irresistible inclination to kill, or to commit some other particular offence.* We are obliged by the force of authority to say to you, that there is such a disease known to the law as homicidal insanity; what it is, or in what it consists, no lawyer or judge has ever yet been able to explain with precision; physicians, especially those having charge of the insane, gradually, it would seem, come to the conclusion, that all wicked men are mad, and many of the judges have so far fallen into the same error as to render it possible for any man to escape the penalty which the law affixes to crime.

"We do not intend to be understood as expressing the opinion that in some instances human beings are not afflicted with a homicidal mania, but we do intend to say that a defence consisting exclusively of this species of insanity has frequently been made the means by which a notorious offender has escaped punishment. What, then, is that form of disease, denominated *homicidal mania*, which will excuse one for having committed a murder?

"Chief Justice Gibson calls it, 'that unseen ligament pressing on the mind, and drawing it to consequences which it sees but cannot avoid, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance'—'an irresistible inclination to kill.'

"If by moral insanity it is to be understood only a *disordered* or *perverted* state of the affections or moral powers of the mind, it cannot be too soon discarded as affording any shield from punishment for crime; if it can be truly said that one who indulges in violent emotions, such as remorse, anger, shame, grief, and the like, is afflicted with homicidal insanity, it will be difficult, yes, impossible, to say where sanity ends and insanity begins; for, by way of illustration, the man who is lashed into fury by a fit of *anger* is in one sense insane.

"As a general rule it will be found that instances are rare of cases of homicidal insanity occurring wherein the mania is not of a *general nature*, and results in a desire to kill any and every person who may chance to fall within the range of the maniac's malevolence; as it is general, so also is it based upon *imaginary* and not *real* wrongs; if it is directed against a particular person (as is sometimes the case), then also the cause of the act will generally be imaginary; when, therefore, the jury find from the evidence that the act has not been the result of an imaginary but *real* wrong, they will take care to examine with great caution into the circumstances of the case, so that with the real wrong, they may not also discover revenge, anger, and kindred emotions of the mind to be the real *motive* which has occasioned the homicidal act.

"Orfila has said, 'that the mind is always greatly troubled when it is agitated by anger, tormented by an unfortunate love, bewildered by jealousy, overcome by despair, haunted by terror, or corrupted by an unconquerable desire for vengeance. Then, as is commonly said, a man is no longer master

Insane uncontrollable impulse

it should appear from the evidence that, at the time of doing the act charged, the prisoner was not of sound mind,

of himself, his reason is affected, his ideas are in disorder, he is *like a madman*. But in all these cases a man does not lose his knowledge of the real relations of things; he may exaggerate his misfortune, but this misfortune is real, and if it carry him to commit a criminal act, this act is perfectly well-motived.'

"The man who has a clear conception of the various relations of life, and the real relation of things, is not often afflicted with insanity of any description. He may become angry, and in a fit of temper kill his enemy, or even his friend, but this is not, and I hope never will be, called in courts of justice insanity. Again, one who is really driven on by an uncontrollable impulse to the commission of a crime, will be able to show its 'contemporaneous existence evinced by present circumstances, or the existence of an habitual tendency developed in particular cases, and becoming in itself a second nature,' and ought further to show that the mania 'was habitual, or that it had evinced itself in more than one instance.'

"Chief Justice Lewis has said that moral insanity 'bears a striking resemblance to *vice;*' and further, 'it ought never to be admitted as a defence until it is shown that these propensities exist in such violence as to subjugate the intellect, control the will, and render it impossible for the party to do otherwise than yield.' And again, 'this state of mind is not to be presumed without evidence, nor does it usually occur without some premonitory symptoms indicating its approach.'

"Gentlemen of the jury, we say to you, as the result of our reflections on this branch of the subject, that if the prisoner was actuated by an irresistible inclination to kill, and was utterly unable to control his will, or subjugate his intellect, and was *not* actuated by anger, jealousy, revenge, and kindred evil passions, he is entitled to an acquittal, provided the jury believe that the state of mind now referred to has been proven to have existed, without doubt, and to their satisfaction."—*Am. Journ. of Insan.*, vol. xv. p. 303.

In Huntington's case, the defendant was tried in New York, in 1858, for forgery. Judge Capron said:—

"The law, as at present administered, regards insanity, whether general or partial, as a derangement of the mind, the intellect, the reasoning and appreciating principle, the spring of motives and passions. To constitute a complete defence, insanity, if partial, must be such in degree as wholly to deprive the accused of the guide of reason in regard to the act with which he is charged, and of the knowledge that he is doing wrong in committing it. If, though somewhat deranged, he is yet able to distinguish right from wrong in the particular case in which crime is imputed to him, and to know that he is doing wrong, the act is criminal in law, and he is liable to punishment. But it is insisted for the prisoner that insanity, either general or partial, may exist, and the subject be totally unable to control his actions, while his intellect, or knowing and reasoning powers, suffer no notable lesion; it is claimed that persons thus afflicted may be capable of reasoning or supporting an argument on any subject within their sphere of knowledge. . . . . This affliction has received the name of Moral Insanity, because the natural feelings, affections, inclinations, tem-

but affected with insanity, and such affection was the efficient cause of the act, and that he would not have done the act but for that affection, he should be acquitted. But

recognized in Illinois and Indiana.

per, or moral dispositions only are perverted, while the mind, the seat of volition and motive, remains unimpaired. I will not positively assert that this theory is not sound; it may be reconcilable with moral responsibility for human conduct; but I am not reluctant to confess my own mental inability to appreciate the harmony between the two propositions, if it exist."

Under this charge the prisoner was found guilty, and sentenced to the state prison.

So in Spear's case (Am. Journ. of Insan., p. 218) Judge Allen told the jury that there must be evidence, in order to acquit, of "a lesion of the intellect and reasoning powers, or of some derangement or disease affecting the mind and judgment."

Daniel E. Sickles was tried in the U. S. Circuit Court for the District of Columbia, in 1859, for the murder of Philip B. Key. The defence was mania, produced by the defendant discovering an adulterous connection between his wife and the deceased. The following statement of the legal points adjudicated is taken from Elwell's Malpractice, p. 391:—

"Mr. Brady claimed that the immediate circumstances attending the seduction of Mr. Sickles's wife, and the death of Key, were of so atrocious a nature as to overwhelm the mind of Sickles instantaneously, and thus render him irresponsible for the crime of murder. He therefore drew up the following propositions, and requested the court to embody them in its charge to the jury:—

"'1. If, from the whole evidence, the jury believe that Mr. Sickles committed the act, but at the time of doing so was under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not in law guilty of murder.

"'2. If the jury believe that from any predisposing cause the prisoner's mind was impaired, and at the time of killing Mr. Key he became or was mentally incapable of governing himself in reference to Mr. Key, as the debaucher of his wife, and at the time of committing said act was, by reason of such cause, unconscious that he was committing a crime as to said Mr. Key, he is not guilty of any offence whatever.

"'3. It is for the jury to say what was the state of the prisoner's mind as to the capacity to decide upon the criminality of the particular act in question—the homicide—at the moment it occurred, and what was the condition of the parties respectively as to being armed or not at the same moment. These are open questions for the jury, as are any other questions which may arise upon the consideration of the evidence, the whole of which is to be taken into view by the jury.

"'4. The law does not require that the insanity which absolves from crime should exist for any definite period, but only that it exists at the moment when the act occurred with which the accused stands charged.

"'5. If the jury have any doubt as to the case, either in reference to the homicide or the question of sanity, Mr. Sickles should be acquitted.'

"These propositions were argued at great length by counsel, especially by Mr. Brady, who contended that the

this unsoundness of mind, or affection of insanity, must be of such a degree as to create an uncontrollable impulse to do the act charged

great sorrow that had fallen upon Mr. Sickles had, in fact, dethroned his intellect, and, for the moment, he was not accountable for what he did. Crawford, J., charged as follows on these propositions :—

"'The court is asked to give to the jury certain instructions, whether on the part of the United States or on the defence. The first instruction asked for by the United States embodies the law of this case on the particular branch of it to which it relates, and is granted with some explanatory remarks as to insanity, with a reference to which the prayer closes. A great English judge has said, on the trial of Oxford, who shot at the Queen of England, "That if the prisoner was laboring under some controlling disease which was, in truth, the acting power within him which he could not resist, then he will not be responsible." And again: "The question is, whether he was laboring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of the act he was committing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious at the time he was committing the act that that was a crime. A man is not to be excused from responsibility if he has capacity and reason sufficient to enable him to distinguish between right and wrong as to the particular act he is doing; a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty. On the contrary, although he may be laboring under a partial insanity, if he still understands the nature and character of his act and its consequences, if he has a knowledge that it is wrong and criminal, and a mental power sufficient to apply that knowledge to his own case, and to know that if he does the act, he will do wrong and receive punishment, such partial insanity is not sufficient to exempt him from responsibility for criminal acts." Now we come to those asked on the part of the defence, the first of which is in these words :—

"'In reply to the ninth instruction, the court responds thus: "It is for the jury to say what was the state of Mr. Sickles's mind as to the capacity to decide upon the criminality of the homicide, receiving the law as given to them in relation to the degree of insanity, whether it will or will not excuse, they (the jury) finding the fact of the existence or non-existence of such degree of insanity."

"'The tenth prayer reads thus: "The law does not require that the insanity which absolves from crime should exist for any definite period, but only that it exist at the moment when the act occurred with which the accused stands charged." That instruction is granted. The time when the insanity is to operate is the moment when the crime charged upon the party was committed, if committed at all. The eleventh and last instruction asked reads this way: "If the jury have any doubts as to the case,

by overriding the reason and judgment, and obliterating the sense of right and wrong as to the particular act done, and depriving the

either in reference to the homicide or question of insanity, Mr. Sickles should be acquitted."

"'This instruction, as I mentioned in referring to prayer four of the United States, will be answered in conjunction with it.

"'It does not appear to be questioned that if a doubt is entertained by the jury, the prisoner is to have the benefit of it. As to the sanity or insanity of the prisoner at the moment of committing the act charged, it is argued by the United States, that, every man being presumed to be sane, the presumption must be overcome by evidence satisfactory to the jury that he was insane when the deed was done.

"'This is not the first time this inquiry has engaged my attention. The point was made and decided at the June term, 1858, in case of the United States *v.* Devlins, when the court gave the following opinion, which I read from my notes of the trial: "This prayer is based on the idea that the jury must be satisfied, beyond all reasonable doubt, of the insanity of the party for whom the defence is set up; precisely as the United States are bound to prove the guilt of a defendant to warrant a conviction. I am well aware, and it has appeared on this argument, that it has been held by a court of high rank and reputation that there must be a preponderance of evidence in favor of the defence of insanity to overcome the presumption of law that every killing is a murder; and that the same court has said that if there is an equilibrium, including, I suppose, the presumption mentioned, of evidence, the presumption of the defendant's innocence makes the preponderance in his favor."

"'Whether a man is insane or not is a matter of fact; what degree of insanity will relieve him from responsibility is a matter of law, the jury finding the fact of the degree too. Under the instruction of the court, murder can be committed only by a sane man. Everybody is presumed to be sane who is charged with a crime, but, when evidence is adduced that a prisoner is insane, and conflicting testimony makes a question for the jury, they are to decide it like every other matter of fact, and, if they should say or conclude that there is uncertainty, that they cannot determine whether the defendant was or is not so insane as to protect him, how can they render a verdict that a sane man perpetrated this crime, and that no other can?

"'Nor is this plain view of the question unsupported by authority. In the case of The Queen *v.* Ley, in 1840, Lewin's C. C. p. 239, on a preliminary trial to ascertain whether a defendant was sufficiently sane to go before a petit jury on an indictment, Hullock, B., said to the jury: "If there be a doubt as to the prisoner's sanity, and the surgeon says it is doubtful, you cannot say he is in a fit state to be put on trial." This opinion was approved in People *v.* Freeman, 4 Denio, 9. This is a strong case, for the witness did not say the prisoner was insane, but only that it was doubtful whether it was so or not. The humane, and, I will add, just doctrine, that a reasonable doubt should avail a prisoner, belongs to a defence of insanity, as much, in my opinion, as to any other matter of fact.'" See *infra*, § 174. See Hoppin's case, rep. 34 Am. Journ. Ins. 462.

accused of the power of choosing between them. If it be shown the act was the consequence of an insane delusion and caused by it and by nothing else, justice and humanity alike demand an acquittal. Sound mind is presumed if the accused is neither an idiot, a lunatic, nor "affected with insanity." If he be insane, sound mind is wanting and the crime is not established, therefore the burden is on the state to establish sanity, and not upon the prisoner to show insanity.[1] So, also, Judge Brewster, speaking for the judges of the Philadelphia common pleas, said, in 1868, "The true test in all these cases lies in the word 'power.' Has the defendant in a criminal case the power to distinguish right and wrong, and the power to adhere to the right and avoid the wrong?"[2]

In Indiana a similar view was accepted in 1869.[3]

§ 160. In Ohio, insane irresistible impulse is regarded as a defence;[4] and such is the view in Minnesota,[5] and in Kentucky.[6] In Iowa, in 1868, similar views were expressed by the supreme court, Chief Justice Dillon delivering the opinion. The capacity to distinguish right and wrong, it was held, is not in all cases a safe test of criminal responsibility. If a person commit a homicide, knowing it to be wrong, but driven to it by an uncontrollable and irresistible impulse, arising not from natural passion, but from an insane condition of the mind, he is not criminally responsible.[7] To the same effect is a decision of the supreme court of the United States in 1872.[8]

And in Ohio, Minnesota, Kentucky, and Iowa.

§ 161. In North Carolina, on the other hand, it has been ruled that no impulse, however irresistible, is a defence, when there is a knowledge of the difference, as to the particular act, between right and wrong.[9] And there is no question that the position that an irresistible impulse can be a defence is inconsistent with the rule laid down in the great body of

Contra in North Carolina and other states.

[1] See Fisher *v.* People, 23 Ill. 283; Hopps *v.* People, 31 Ill. 394.

[2] Com. *v.* Haskell, 2 Brewst. 491.

[3] Stevens *v.* State, 31 Ind. 485.

[4] Blackburn *v.* State, 23 Oh. St. 146.

[5] State *v.* Gut, 13 Minn. 341.

[6] Smith *v.* Com., 1 Duv. 224.

[7] State *v.* Felter, 25 Iowa, 67; see also McFarland's case, 8 Abb. Pr. N. S. 57; and Mary Harris's case, 22 Am. Journ. Ins. 334.

[8] Life Ins. Co. *v.* Terry, 15 Wal. 580; see also Blackburn *v.* State, 23 Ohio St. 165; Brown *v.* Com., 78 Penn. St. 122; and other cases in Wh. Cr. L. 8th ed. § 45.

[9] State *v.* Brandon, 8 Jones, 463. See also *infra*, § 170.

cases which sustain the "right and wrong" test as an exclusive standard.[1]

Mania transitoria not a defence.

§ 162. *Mania transitoria*, or *Furor transitorius*, so far as it may be set up as a legal defence, may be properly noticed in this connection; its psychological relations being reserved for subsequent discussion.[2] *Mania transitoria*, which is alleged to be a sudden attack of mania, exhibiting itself in a person whose life prior and subsequent to the attack was generally sane, was set up as a defence in the trial, before the supreme court of Massachusetts, in 1868, of Andrews for the murder of Holmes. The psychological points raised at this trial will be subsequently noticed. It is sufficient now to give the legal results introduced by Chief Justice Chapman in his charge to the jury.

"Insanity is to be distinguished from passion. One may become so far infuriated by passion, excited by words or blows or by a struggle, as to yield himself up blindly to its impulse, and not know what he does. But such passion is not insanity. One who does not control his passions is to blame, but an insane man is not to blame. He is prostrated by disease of body which has so far affected his mind that he is innocent in being unable to distinguish right from wrong.

"If the prisoner killed Holmes under the mere influence of evil passions, and without provocation, he is guilty. On the other hand, if there was no evil passion or motive, and he was insane, he is an innocent man, and is entitled to go at large as much as any of us. If he is acquitted on that ground, you must say so in your verdict. I will read to you the statute on that subject. [Reads Gen. Stat., c. 172, sec. 17.]

"But, as it is not pretended that he is now insane, if you acquit him on the ground of insanity he will be entitled to go at large. You will need to consider with the utmost care the evidence on this subject. And here there are certain presumptions of fact which are founded on experience.

"If when a man does an act he has always been sane, this tends to prove that he was sane when he did it. On the contrary, if he

[1] See Wh. Cr. L. 8th ed. § 35 *et seq.*; U. S. *v.* Guiteau, *infra*, § 679.

[2] See *infra*, § 710; U. S. *v.* Guiteau, *infra*, § 679.

had been insane a short time before the act, this tends to prove that he was insane when he did it. This presumption is often applied to the making of wills and deeds. It applies with equal force to the taking of another's life. Another similar rule is that, if a man is sane just after having done an act, it tends to prove that he was sane when he did it; but, if he was insane just after, it tends to prove that he was insane when he did it. You can judge practically how strong these presumptions of evidence are. You are to apply them to the present case.

"Up to within a few moments of Holmes's death, had the prisoner been insane? Had he ever been insane? or had he been insane within a short period? If he had never been insane, or if he had not been insane for some time previous, that would have a tendency to show that he was not insane when he committed the act. From a few moments after the act has he been insane? If he has been sane from a few moments after the act, it tends to show that he was sane when he did it. If he has been insane since, it tends to show that he might have been insane when he did it.

"There is evidence on this subject as to his appearance some two years ago, when Frank Robbins, his relative, died; also as to his appearance at New Market. And some other facts are alluded to by his counsel. You heard them in evidence. I do not propose to recapitulate the evidence on this subject. Both the experts say that these various circumstances furnished no proof of insanity. There is also evidence that the prisoner had frequent headaches; but it hardly needs an expert to testify as to them. So many of us suffer intense pain from them during the best years of our lives, that no one will infer insanity from them alone. The jury will judge of the strength of the proof as to the prisoner's sanity when he killed Holmes, arising from the testimony as to his being sane before and afterwards, the proof coming so near to the time of killing. If he was calm as well as rational immediately before and immediately after, it will tend to show how far he was calm and rational then. And in this connection the question, whether the prisoner had any motive to do the act which could possibly influence a sane man, is a question to be taken into consideration. You will also consider the instrument which he used, and all the circumstances of the act of killing. The prisoner is himself a witness, and testifies as to his state of mind when he did the act. We learn

from him all the facts we know in regard to his insanity at the time. The description of it comes from him alone.

"There are two things to be inquired into on this point. In the first place, assuming his statement to be true, does it prove that bodily disease had suddenly attacked him, and that he acted under that influence, or that he acted under the influence of passion, and thus became blind and furious? If it was the latter it was not insanity, and he must seek for an excuse on other grounds, which I shall speak of hereafter. On this point the opinion of the two experts is given. Dr. Jarvis says the facts indicated a maniacal paroxysm. Again, he says, not regarding the prisoner's statement as true, the facts tend to raise a suspicion of insanity. He says the act of killing, of itself, is no evidence of insanity. Few men would pretend that the mere act of killing another is, of itself, evidence of insanity. It would give to crime perfect impunity if the commission of crime were to be regarded as an evidence of insanity. I believe there are some philosophers who pretend to think it is so; but they lay aside common sense, and would deprive the community of all protection against criminals. It is proper also to say, that, if a homicide is committed with circumstances of cruelty and atrocity, that cruelty and atrocity, of itself, does not tend to prove insanity. The statute treats such circumstances as aggravations of the crime, and not as proof of insanity. If they were of themselves regarded as evidence of insanity, it would furnish an inducement to every murderer to act with as much cruelty as possible, in order to furnish proof that he was insane, and excuse himself on that ground. But if the act is done without any assignable motive, you look more readily to insanity as the cause, than if a strong motive were proved.

"I have spoken of the opinion of Dr. Jarvis that there might have been a sudden attack of insanity that came on without any premonition, led to the murder, and departed as soon as the murder was committed, leaving no trace behind. The opinion of Dr. Choate is the contrary. He regards such a kind of insanity as unheard of and impossible. As insanity arises from bodily disease, he thinks it could not come on so suddenly, rage so violently, and then totally disappear. You are to judge of these opinions. The opinions of experts are mere evidence for the jury to consider in connection with other evidence. The responsibility is, after all,

on you to say whether the prisoner is, or is not, guilty by reason of insanity. I think the opinions of experts are not so highly regarded now as they formerly were, for, while they often afford great aid in determining facts, it often happens that experts can be found to testify to any theory, however absurd. The experts before you are gentlemen of learning, and you must judge between them."[1]

4. "*Moral insanity*" (i.e. *a supposed insanity of the moral system claimed to coexist with mental sanity*) *is no defence.*

[*For several important medico-juridical opinions in cases of alleged "moral insanity," see Appendix to third edition of this work*, §§ 834, 838, 843, 848.]

"Moral insanity" is no defence.

§ 163. At the outset it must be remembered that "moral insanity," as above defined, is to be distinguished (1) from insane irresistible impulse, (2) from transitory mania, and (3) from occult insanity, with each of which it is sometimes confounded.

Hereafter it will be shown[2] that moral insanity, viewed in this sense, has, psychologically, no existence.[3] It will also be shown that "motivelessness" is no necessary proof of insanity. At present it will be shown that moral insanity is not, by our law, a defence to an indictment for crime.

This affirmed in England.

§ 164. Moral insanity, viewing the term in the sense which is given above, has been, whenever it has been suggested as a defence, repudiated by the English courts.[4]

In Townley's case.

§ 165. On the trial of Townley in 1868 this question was distinctly presented. The defendant was shown, on the trial before Baron Martin, to have belonged to a family in which positive insanity existed; it was proved by medical wit-

[1] See review of this case by Dr. Jarvis, in 26 Am. J. Ins. 369; and *infra*, §§ 710–722. For an interesting case of alleged *mania transitoria*, with the opinion of Dr. Casper, see App. to 3d ed. of this work, § 840.

[2] *Infra*, §§ 531–678.

[3] *Infra*, §§ 401–404.

[4] R. *v.* Oxford, 9 C. & P. 525; R. *v.* Goode, 7 A. & E. 536; R. *v.* Barton, 3 Cox, C. C. 275; R. *v.* Higginson, 1 C. & K. 129; R. *v.* Layton, 4 Cox, C. C. 149; and cases hereafter cited.

nesses that he stated to them that he did not think he had committed any crime, though it must be remembered that this is what was said by Burr after the death of Hamilton, and what would be said by any one acting on the "law of honor," or any other pretended higher law; and it was shown that the reason on which he relied for this notion was, that, the lady whom he killed having been engaged to him, she was his property, and that, for what he called virtual adultery, he was, by the law of honor, entitled to punish her by death. It was also testified by Dr. Forbes Winslow, that he found it impossible to impress the defendant with a sense of the seriousness of the issue. But Baron Martin charged the jury, that, in point of law, these facts did not constitute a defence. "If," said he, "his (the defendant's) *real motive was, that he conceived himself to have been ill used, and, either from jealousy of the man who was preferred to him, or from a desire of revenge upon him*, committed the act, that would be murder. These were the very passions which the law required men to control; and, if the deed was done *under the influence of these passions*, there was no doubt that it was murder." The cautiousness with which this is stated cannot escape observation. The judge does not say that the defendant was to be convicted though he did the act under an insane delusion that to do so was, by some supposed higher law, right. It is simply declared that to kill under influence of jealousy or revenge is murder. It is proper to add that the defendant was convicted, and sentenced for life to penal servitude; during which he committed suicide.[1]

§ 166. The Rev. J. Selby Watson, a clergyman of over seventy years, was tried in London, in January, 1872, for the murder of his wife. It appeared in evidence that for

In Watson's case.

[1] See R. *v.* Townley, 3 F. & F. 839; *supra*, § 127. Shortly after Townley's case, on a trial for murder, before Erle, J., the defence relied on evidence showing a great amount of senseless extravagance and absurd eccentricity of conduct, coupled with habits of excessive intemperance, causing fits of delirium tremens, the prisoner, however, not having been laboring under the effects of such a fit at the time of the act, and the circumstances showing sense and deliberation, and a perfect understanding of the nature of the act: it was held, that the evidence was not sufficient to support the defence, as it rather tended to show wilful excesses and extreme folly than mental incapacity. R. *v.* Leigh, 4 F. & F. 915. See also R. *v.* Southey, 4 F. & F. 864; and also an interesting review in 23 Am. Journ. of Insanity, 387.

years he had been suffering under her petulance and violence; and it was made probable that the act was done in a condition of frenzied rage. The defence was insanity, lashed into fury by provocations which had become unendurable. Mr. Justice Byles, in his charge to the jury, said, according to the report in the *Times* of January 13, 1872, "that the real and only question . . was this, Was the prisoner at the time he committed the act legally responsible for it, and was he a responsible agent? That depended upon a question on which the counsel also agreed, Did he at the time he committed this act *know what he was doing?* If not, of course he was not criminally responsible. Did he also know that what he was doing was wrong?" The learned judge added that he was aware that doubts on the universal applicability of this rule had been expressed by many eminent persons for whose opinion he had the greatest respect. "But if it was to be altered at all, it must be altered by act of parliament." The defendant was convicted and sentenced to be hung, with a recommendation to mercy; and the sentence was commuted to imprisonment for life.

And in Edmunds's case.

§ 167. Christiana Edmunds was tried in January, 1872, at London, before Baron Martin, for the murder of a little boy, named Barker, on the 12th of the preceding June. The uncle of the boy had on that day bought some chocolate cream drops from a respectable confectioner named Maynard. Of these the boy ate several, and died a few hours afterwards. At a *post mortem*, strychnine enough was found in his stomach to have killed an adult. Shortly afterwards evidence transpired which connected the prisoner with the poisoning. It appeared that between March and June she obtained from a chemist at Brighton, on various pleas, and once on a false name, a considerable quantity of strychnine. Towards the end of May, she sent a boy whom she met in the street to buy some chocolate drops for her at Mr. Maynard's. When he returned with them, she said they were too large, and she sent him back to exchange them for others which were smaller. This was done; and the case of the prosecution was that, in this way, she introduced into the shop the poisoned sweets by which young Barker had been killed. It further appeared that she had frequently sent little boys on a similar errand; that she had left parcels of sweets in other shops; and that children who had eaten out of these parcels had been taken sick with

symptoms not unlike those produced by strychnine. It was shown, also, by way of motive, that she had become attached to a Dr. Beard; that she had given Mrs. Beard a chocolate-cream which had caused the latter much sickness; that, to divert suspicion from herself of intentional poisoning, she had sought to throw the charge on Mr. Maynard; that, to do so, she had, in the way specified, introduced poisoned candy into his store; and that, to clinch the matter, she gave evidence, on the inquest that followed the death of young Barker, that she had herself bought poisonous candy at Mr. Maynard's shop. She was also shown to have written anonymous letters to the father of Barker urging him to prosecute Mr. Maynard; and she took an active part in that prosecution herself.

§ 168. Insanity was the defence, and it was proved that the prisoner's father was, at the age she had reached on the trial, a maniac, and that he died in an asylum; that her brother was from childhood an epileptic idiot; that her sister labored under chronic hysteria, and had attempted suicide; that her mother's father died at 43 in an imbecile state from paralysis; and that she herself, eighteen years before, had suffered from partial paralysis and hysteria. Dr. Wood, physician to St. Luke's Hospital, stated that he visited the prisoner about ten days before the trial, in connection with Dr. Maudsley and others. He was struck with her indifference to her position; he thought her quite incapable of estimating it; and he believed her "incapable of judging between right and wrong in the same sense that other people would." Dr. Robertson testified that he thought "her intellect quite clear and free from any delusion, but that her moral sense was deficient, as in the descendants of insane parents." Dr. Maudsley concurred generally with Dr. Robertson, but he went on to say, in his cross-examination, that "everybody who committed crime exhibited some want of moral feeling."

§ 169. Baron Martin, in his charge,[1] said, in respect to insanity, the question "was a difficult one. A poor person, he remarked by the way, was seldom afflicted with insanity, and it was common to raise a defence of that kind when people of means were charged with the commission of crime. He had heard a doctor say that all

[1] See report in the *Times*, of January 17, 1872.

mankind were mad more or less, but that had little to do with the case under consideration. The state of mind which excused crime was well fixed in our law. There were many diseases to which the mind was liable as well as the body. There was the idiot, who was born without any mind whatever. Again, there was the man who was raging mad, and, if he had what was called a homicidal tendency, he would have no more criminal responsibility than a tiger. But the most numerous cases of that kind were of persons said to be subject to delusions. They were persons who believed in a state of things which did not exist, and acted on that state of things." After giving the answers of the judges in McNaughten's case, he said, "If the jury in this case should think that the prisoner *did not know right from wrong at the time she committed the crime with which she is charged, if she did commit it*, they must acquit her." The scope of the charge is, that, if the defendant was under a delusion which made the poisoning seem right to her, she was entitled to an acquittal on the ground of insanity. If not, she should be convicted. It is difficult to see what sound objections can be made to this view of the law. If the fact that a person has descended from insane ancestors, or has years back shown symptoms of insanity, is a bar to an indictment for crime, then persons who have been so affected will become a class who can murder, or burn, or rob with impunity, and whom society, as it cannot punish, will be obliged to sequestrate by a process which will bear far more harshly on them than would the penal amenability which would be otherwise imposed. The act for which the prisoner was tried was marked by much premeditation, and was executed with great intelligence; and there was no proof at the trial either of any insane delusion on her part, or of such a condition of mind and will as deprived her of ability to resist the impulse to the fatal deed. Dr. Robertson came nearest to a positive statement; but he limited himself to saying, that, while the prisoner's intellect was good, her moral sense was deficient, and that her act was "on the border-land between crime and insanity. Even, therefore, supposing that the law recognized such a defence as irresistible homicidal impulse, it is difficult to see how this defence could have been sustained on such feeble asseverations as these, in the face of direct proof that the prisoner was fully capable of so moulding her "impulse," not only as to make it subservient to a very important

purpose of her own, but to let it out when it was likely to be undetected, and to restrain it when to indulge in it would bring exposure. She was under the dominion, so far as the testimony went, of no such unrestrainable rage for poisoning as would force her to lay her poison in the public streets, whenever the poison was in her hands, and persons to be poisoned before her face. She poisoned when she could do so with impunity; she controlled herself when she could not.

§ 170. Such is the case as it appeared on the trial. But, so slight were the opportunities of examination which had been secured by the experts who testified for the defence, and so consequently imperfect was their testimony, and so earnest were the appeals made for a reconsideration of the question on the grounds of additional testimony as to insanity having been secured, that Baron Martin united in recommending a reconsideration of the question by the home secretary.[1] Additional medical testimony was taken, and

[1] The *Lancet* took strong grounds against the verdict. It went so far as to make the following extraordinary statement:—

"If there be one thing certainly proved in mental medicine, it is this, that for any woman belonging to a family which (like that of the Edmunds's) was a prey to insanity and other nervous diseases, and living an involuntarily single life while struggling with hysteria and suppressed sexual feeling, it would be almost *impossible* to go on to the critical age of forty-three without actual derangement of mind. That her crime had a motive, and that her conduct was directed with an infernal cunning towards her end, is not in the least inconsistent with the worst forms of madness. We do not hesitate to say that had Christiana Edmunds been hanged, a judicial murder would have been committed."

Dr. Forbes Winslow added his high authority to the opinion of Dr. Robertson. See also Review of these communications in *London Spectator* of Feb. 3, 1872.

The following are part of the comments of the *Saturday Review*:—

"It must be admitted that public opinion influences the administration of criminal justice in this country, and public opinion is liable to fluctuations. Some years ago corporeal punishment was in extreme disfavor, whereas now people apparently like their newspaper to inform them how a garroter looked during his flogging, and it is frequently suggested that other offences besides robbery with violence might be usefully visited with the lash. Garroting indeed went on until nobody was safe in the streets after dark, and it was felt that the civilization and humanity of the age must submit to the unpleasant necessity of reviving a punishment which had been regarded as only suitable to a period of ignorance and barbarism. . . Suppose that Townley had been acquitted on the ground of insanity, and that, as is only too probable, that form of insanity had become common, there would soon have been a general concurrence of opinion that hanging was the only effectual cure

it was understood that Sir W. Gull, and Dr. Orange, superintendent at Broadmoor, both high authorities in psychological medicine,

for it. . . Mr. Baron Martin, in that case, told the jury that, if Townley knew that the act which he committed was contrary to the law of God and punishable by the law of the land, he was guilty of murder. This, indeed, is all that an English judge can say of such a case, and perhaps it is all that he ought to say. The doctrine of vitiated moral sense excusing crime cannot be admitted without endangering the foundations of morality and criminal justice. Take, for example, the character which would have been described in the words of a well-known play of the last century, as that of 'bold intriguer and a gay companion.' The heroes of many comedies of that time were men of vitiated moral sense, but it would never have occurred to any psychologist to suggest that seduction or adultery was pardonable because it was committed without compunction. Another medical witness, Dr. William Wood, 'was very much struck with prisoner's absolute indifference to her position, and he failed altogether to impress her with its seriousness.' These, again, are almost the exact words which were used by Dr. Forbes Winslow in Townley's case. This witness discussed with the prisoner the subject of what was said to have passed between her and Dr. Beard. He asked whether she thought it wrong for a person to destroy the life of another person because she believed that the husband of that person wished to get rid of her. 'After some hesitation she said she thought it would be wrong, but she did not say it in such a manner as to lead him to believe she really thought so.' The witness here admits, while attempting to qualify the admission, that the prisoner had that capacity of distinguishing right from wrong which the law holds to be sufficient to render her responsible for her actions. It seems to follow that until the law is changed there is nothing more to be said about the case. Dr. Maudsley gave evidence to the same effect. 'He found an extreme deficiency of moral feeling as to the crime with which the prisoner was charged, and she did not appear thoroughly to realize her position.' Such evidence ought to be disregarded in this as it has been in many other cases, but it happens that the medical witnesses are supported by the fact that near relations of the prisoner have been committed to lunatic asylums on the usual certificates, and have remained in them until death. Mr. Baron Martin, commenting upon similar evidence which was given in Townley's case, said the object of that evidence was to show that it was possible, and not unlikely, that the hereditary taint might exist in the prisoner. 'All the evidence, however, failed to show the existence of any delusion in the prisoner's mind which could explain his act.' These words fit accurately to the present case, but it must be acknowledged that the evidence of insanity in the prisoner's family went much beyond that which was given in Townley's case. It is of course possible that the doctors may be right although they give wrong reasons for their conclusions. We may observe that Dr. Maudsley has given the same reason for the same conclusion in the case of Watson, where we cannot help saying that both reason and conclusion appear to us preposterous. It has of course been remarked that, if the prisoner Edmunds had committed suicide, and the evidence of insanity existing

united, after a careful examination, in the opinion that the defendant was insane. Her sentence was consequently commuted to imprisonment at Broadmoor as a criminal lunatic.

§ 171. In reviewing this case, we are first compelled to notice the very scanty preparation which had been made to enable the medical experts at the trial to speak intelligently on the issue. The defence, indeed, was singularly defective in the scope of the testimony it adduced. Dr. Beard, the defendant's family physician, for whom it was afterwards suggested by Dr. Winslow that the prisoner had an "insane passion," was not called; though no one was so competent as he to speak as to the state of her mind. But, waiving this, the experts who were examined had had no personal acquaintance with her, and formed their opinion on a brief prison interview. How little comparative weight opinions given on such slight examinations are entitled to, will be hereafter seen.[1] The medical gentlemen referred to were not to blame. They were asked by the prisoner's friends to attend her at the periods in question, and they did so. The difficulty arose from the practice of making such examination, not judicial, as in Germany, under a commission from the government, but partisan, conducted by the defence, according to its capacity or policy. A *poor* defendant, under this system, has no chance. A *rich* defendant can indeed, at such periods as he may desire, obtain the attendance of distinguished experts, but their testimony is necessarily imperfect and *ex parte*.

§ 172. Then, again, the peculiar mode by which convictions are in England reviewed tends, in proceedings such as the present, still further to unsettle the public mind, and to increase the uncertainty

in the family had been given at an inquest, the jury would have arrived without hesitation at a verdict which would have been generally approved. It is, however, unnecessary to add that in all such cases we ought not to be unduly influenced in our estimate of facts by the indisposition which we feel to give apparent sanction to a theory of irresponsibility for crime which we regard as mistaken and pernicious."

In commenting on these cases, a writer in the *Times* said: "Oxford's confinement as a lunatic had no effect whatever in preventing persons of weak or perverse minds from firing or attempting to fire at her majesty; but the moment flogging was assigned as the penalty for the offence, the weak and the perverse restrained themselves at once, and the offence was never heard of again."

[1] See *infra*, §§ 328–345.

of the law. That the home secretary should have issued a requisition to Dr. Orange and Sir W. Gull, to semi-judicially examine the question of Christiana Edmunds's sanity, was eminently proper. But the examination should have been conducted in open court, or, at least, as is the practice in Germany, the return of those eminent physicians should have been under oath, and should, reasons and conclusions, have been published. As it is, we have, on the one side, a *published* trial, leading to the conclusion of her sanity, on which conclusion she was found guilty by the jury and sentenced by the court, and, on the other hand, a *secret* subsequent investigation, showing her insanity, leading to the virtual setting aside of verdict and sentence. We have no right to assume otherwise than that each decision, on its own particular evidence, was right. But, to understand the decision of the home secretary, the testimony on which it was based should be supplied.

§ 173. But, thirdly, it must be recollected, that, whatever may be thought of the rightfulness of the verdict on the merits, there was at no time any question as to the propriety of the rulings of the court. These rulings were the subject of careful consultation among the several judges. It was stated by Baron Martin, that the rulings expressed their deliberate view, and that it was not likely to be changed except by act of parliament. The challenge thus thrown out has not been accepted. In the house of lords, which, as the supreme appellate court of the empire, is peculiarly charged with cognizance of such issues, the only expression on the subject has been one of assent. We may therefore hold it to be established in England, that the doctrine of "moral insanity," so far as it involves the idea of irresponsibility based exclusively on moral as distinguished from mental derangement, is rejected by the courts.

So in the United States.

§ 174. In the United States, there is almost equal judicial unanimity in refusing recognition to this theory, and in declaring that no amount of derangement of morals is a defence unless accompanied with mental insanity. To this effect are decisions in Massachusetts,[1] in Maine,[2] in Connecticut,[3] in New

[1] Com. *v.* Rogers, 7 Metc. 500; Com. *v.* Heath, 11 Gray, 303; see U. S. *v.* Holmes, 1 Clifford, 198; U. S. *v.* Schultz, 6 McLean, 120.

[2] State *v.* Lawrance, 57 Me. 574.

[3] State *v.* Richards, 39 Conn. 591; but see Anderson *v.* State, 43 Conn. 514.

York,[1] in New Jersey,[2] in Delaware,[3] in Virginia,[4] in North Carolina,[5] in Georgia,[6] in Ohio,[7] in California,[8] and in other jurisdictions where the question has been mooted.[9] In Pennsylvania, it is true, there is an apparent departure from this current of authority by the acceptance, in a case already cited,[10] of "moral insanity" as a doctrine that could be under certain circumstances sanctioned by the courts. But a scrutiny of this case will show, that Chief Justice Lewis, in the case referred to, means by "moral insanity," not the *mania sine delirio* of Pinel, or, as here defined, moral without mental lunacy, but insanity in its general sense, manifesting itself in irresistible impulse. His views, therefore, are in accordance with those here expressed.

§ 175. The nearest advance to the recognition of moral insanity was made in 1864, by the court of appeals of Kentucky.[11] This result was in part due to a reaction from the extreme to which the courts and executive had, in one or two noted prior cases, gone in rejecting the defence of insanity almost *in toto;* but, be this as it may, we find Robertson, J., who, when at the bar, had taken bold ground, in one of the cases last referred to, in maintenance of moral insanity, now maintaining the same position on the bench. "Moral insanity," he tells us, "is now as well understood by medico-jurists, and almost as well established by judicial recognition, as the intellectual form.[12] Mentally,

Exception in Kentucky.

[1] Freeman *v.* People, 4 Denio, 9; *supra*, § 145. Shorter *v.* People, 2 Comst. 193; McFarland's case, 8 Abb. Pr. N. S. 57; Flanagan *v.* People, 52 N. Y. 467.

[2] State *v.* Spencer, 21 N. J. L. 196.

[3] State *v.* Windsor, 5 Harr. 512.

[4] Vance *v.* Com., 2 Va. Cases, 132.

[5] State *v.* Brandon, 8 Jones, L. 463.

[6] Choice *v.* State, 31 Ga. 424.

[7] State *v.* Gardiner, Wright, O. 392; see U. S. *v.* Schultz, 6 McLean, 120; Farrer *v.* State, 2 Ohio St. 54.

[8] People *v.* Coffman, 24 Cal. 230; People *v.* McDonell, 47 Cal. 134.

[9] The courts, in varied terms, unite substantially in declaring, as the proposition is stated by a very able jurist, Judge Thurman (Farrer *v.* State, 2 Ohio St. 54), "that there is no authority for holding that mere moral insanity, as it is sometimes called, exonerates from responsibility." S. P. Judge Cox's charge in U. S. *v.* Guiteau, *infra*, § 679.

[10] See *supra*, § 158.

[11] Smith *v.* Com., 1 Duv. 224.

[12] To this assertion, Dr. Chipley, medical superintendent of the Eastern Kentucky Lunatic Asylum, makes, in the *American Journal of Insanity* for July, 1866, the following just reply:—

"It has seemed to me that it is not an unusual thing for those who entertain the opinions expressed by the court, to claim a greater weight of authority in their favor than is warranted by the facts. Judge R. says:

man is a dualism consisting of an intellectual and a moral nature. . . . No enlightened jurist now doubts the existence of such a

'Moral insanity is now as well understood by medico-jurists, and almost as well established by judicial recognition, as the intellectual form.'

"It is to be feared that this assertion has been derived, not from an examination of the decisions of the courts, but from the declarations of active partisans whose wishes are father to the thought.

"So far as I have been able to ascertain, the doctrine of moral insanity has not been recognized in the courts of England, whence we have drawn our principles of law; nor in the courts of this country, except in a few isolated instances. Certainly its recognition has not been generally acceded to in the higher courts of either country. Nor is there any greater accord among those medical men whose positions have made them most conversant with all forms of mental maladies.

"The doctrine is not recognized, for any medico-legal purposes, by a majority of the members of this association, to whom is confined the care of almost all the insane in our country.

"While, therefore, it remains unrecognized in the courts of England, and has been admitted by only very few judicial authorities in our own land; and while it is repudiated, as a false doctrine, fraught with great evil to society, by a majority of the practical psychologists, known to us to be gentlemen of fidelity, integrity, and experience, are we not warranted in entering a claim to the weight of authority in the negative? Certainly there is something more than a 'dissentient voice occasionally heard from the bench, the bar, the medical profession at large, and from those who claim some special knowledge of insanity and the insane.'

"That the doctrine is advocated by many honest, capable, and faithful observers, no one can gainsay. It is impossible to avoid this division of sentiment on any scientific or professional question not absolutely demonstrative in its character, and it is the division of sentiment among gentlemen who are ardently seeking truth, and the importance of the subject, which bring it so frequently to the surface for renewed examination. There is here no partisan spirit, but a sincere desire to harmonize on a truthful and solid basis.

"I do not propose to discuss the abstract question of the possibility of a perversion of what are called the moral powers, or, as Professor Upham terms them, the sensibilities.

"This may occur from ill-directed education, from habit, evil associations, and the absence of that salutary control that should be exercised over persons in early life, which make men desperately wicked. But the practical question for us is this: Shall such perversions free one from legal penalties while the intellectual powers are unimpaired? In the school of morals and the forum of conscience, I will readily admit that all crimes are species of insanity, but I am not prepared to admit the plea of insanity as an excuse for violations of law, unless it can be shown that there is a congenital or accidental defect of those powers with which the Creator has endowed man for the purpose of enabling him to discriminate between right and wrong and to choose the one and avoid the other.

"In this discussion it is important

type of moral, contradistinguished from intellectual insanity as *homicidal* mania, or morbid and uncontrollable appetite for man-

also to understand what is meant by moral insanity. If we accept the definition of some of its advocates, as that of the learned Dr. Copland, the controversy is at an end, and the adjective 'moral' may be very properly dropped from medico-legal science. He defines it to be 'a perversion of the inclination, temper, etc., the intellectual faculties being more or less weakened or impaired.' This yields all for which the opponents of the doctrine contend. They make no claim to any special amount of intellectual impairment, but simply insist that some degree of mental unsoundness is required to free one from accountability for his acts. But the term is not generally applied, simply because the mental aberration is manifested chiefly in the state of the feelings, affections, temper, habits, and conduct of the individual; but, in the language of Dr. Prichard, who is said by Dr. Bucknill to have been 'the able and learned inventor of moral insanity,' it denotes 'a disorder which affects *only* the feelings and affections, or what are termed the moral powers of the mind, in contradistinction to the powers of the understanding or intellect.' It is in this sense that I propose to consider the doctrine.

"Whenever, therefore, it can be shown that any one or more of the intellectual faculties become unsound from disease, the case is at once removed from the category of moral insanity. It will be important to bear this in mind, especially, in any consideration that may be given to the cases that have been so repeatedly alleged as instances of pure moral insanity—cases which have been cited and reproduced so frequently that they have become sufficiently worn to expose the fallacy of the very doctrine they are intended to support.

"In order to determine the limits of man's responsibility, it is important to ascertain the foundation of his accountability. Why is he held responsible for his acts?

"On this topic, I do not intend to enter upon any metaphysical disquisition. Metaphysicians are not agreed among themselves, in the views they entertain. They are all prone to analyze the mind into great departments, assigning to each certain functions or powers. Professor Upham says: 'The human mind exists in the three great departments of the intellect or understanding, the sensibilities, and the will,' and he declares 'the office of the will is mandatory and executive.'

"Others, with more reason I think, consider the will as a mere resulting power—the mere power of obeying the dictates of the understanding.

"For all our purposes, the mind is in entity with multiple powers of manifestation.

"We admit that, in a certain sense, the propensities and sentiments are integral portions of our mental constitution, and that they are liable to irregular and deranged action; but it does not follow that one may become irresponsible for his acts while intellect remains sound.

"Man is not made accountable because he is endowed with propensities and instincts; these he has in common with the beasts that perish, and for whom no criminal laws are enacted.

"Man's propensities and passions, and their liability to irregular and deranged action, make penal statutes necessary to the protection of society; but he is held accountable only because

killing; and *pyromania*, or the like passion for house-burning; *kleptomania*, or an irresistible inclination to kill." . . . But, if his insanity extend no further than a morbid perversion and preternatural power of insane passion, or emotion, he not only "knows right from wrong," but knows, also, that the act he is impelled to do is forbidden by both moral and human law.

§ 176. We have to regret, in the opinion just quoted, an ambiguity in the use of terms which makes it doubtful whether the "moral insanity" of which the writer speaks, is simply the "irresistible impulse" of a person mentally insane, or is that supposed state of moral unsoundness coexisting with mental soundness which the technical term conveys. If the former was intended, the decision goes no further than those sustained in previous sections, which declare that an irresistible impulse, in an insane person, coercing crime, is a defence to an indictment for such crime. If, however, Judge Robertson meant more than this—if his purpose was to say that there could be moral insanity coexisting with mental sanity—then we must remember that he states this as a supposed rendition of medical science, and that his opinion is simply a statement of fact as to which it will be seen he is mistaken. So far from moral

he is also endowed with intellectual faculties and a free rational will or power capable of regulating and controlling the sensibilities.

"If one is born with all the emotional endowments of our nature, but destitute of understanding, his irresponsibility is unquestionable. The same is true when the faculties of the understanding are perverted, impaired, or destroyed by disease.

"In every aspect in which man's accountability is viewed, we arrive at the same point, that its sole basis is the existence and soundness of the intellectual powers—those wonderful endowments which so eminently distinguish man from other animals, which enable him to discriminate between good and evil, right and wrong, and to choose the one and avoid the other; or, in the language of Judge R., he is accountable because he has 'the light of reason to guide him in the pathway of duty, and *a free* and *rational presiding will* to enable him to keep that way in defiance of all passion and temptation.'

"If, then, accountability is a structure erected solely on the intellectual power, must it not remain unshaken so long as its foundation is sound and unbroken? Is it not illogical to set out with the fundamental proposition, that man is made responsible for his acts only because he is gifted with an understanding, and then arrive at the conclusion that he may become irresponsible without the impairment or disease of any one of its powers?"

insanity in this sense being accepted, it is repudiated by the just weight of modern psychological opinion.[1]

§ 177. In 1869, the same judge, in an insurance case, where the question was whether an insane suicide avoided the policy, took occasion further to enforce these views: "According to matured philosophy, and the corroborating authority of elementary writers such as Prichard and Esquirol and Ray and Taylor, and of many modern adjudications, both British and American, there may be moral as well as intellectual insanity, and essentially distinguished from it. When, as often happens from congenital malorganization or supervenient disturbance of the normal condition of a 'sound mind in a sound body,' *the senses present false images which are accredited necessarily by the deluded victim as intuitive certainties*, no reasoning or proof can rectify the illusion of a mind in such abnormal condition, and, consequently, as no punitory sanction can prevent the effect of such insane delusion, there is no legal responsibility. But, while the senses are apparently sound and true, the affections may be perverted or the moral sentiments unhinged in such a degree as to subjugate the *will* to some morbid appetite or ungovernable passion, and thus precipitate against the will insane but conscious wrong. This is contra-distinctively called moral insanity. Such are the forms of *monomania* entitled *kleptomania*, *pyromania*, *nymphomania*, *homicidal mania*, etc., now well defined and recognized as irresponsible insanity. Whether and how far these two distinctive forms of insanity run into and sympathize with each other is unknown. But generally the one is apparently untinged by the other, and in moral dethronement by insane passion there may be no delusion, but the will is overwhelmed by delirious passion, which it can neither stifle nor successfully resist." It was held, therefore, that self-destruction under *moral* insanity was such death as made the insurers liable, though the policy contained the usual clause of avoidance in case of suicide.[2]

§ 178. But the authority of this opinion is more than neutralized by the fact that it was delivered in a divided court, assented to by two judges, and, in respect to the question of moral insanity, dissented from by Chief Justice Williams and Judge Harding. "In

[1] See *infra*, §§ 531–678.

[2] Ins. Co. *v.* Graves, 6 Bush, 268; 1 Big. Ins. Cas. 736.

all the vague, uncertain, intangible, and undefined theories of the most impracticable metaphysician in psychology or moral insanity," said Williams, C. J., "no court of last resort, in England or America, so far as has been brought to our knowledge, ever before announced such startling, irresponsible, and dangerous proposition of law, as that laid down in the inferior court. For, if this be law, then no longer is there any responsibility for homicide, unless it be perpetrated in calm, cool, considerate condition of mind. What is this proposition when compressed into a single sentence? That, if his 'intellect was unimpaired, and he knew it was forbidden both by moral and human laws,' yet, if at 'the *instant* of the act his will was subordinated by any uncontrollable passion or emotion causing him to do the act, it was moral insanity, and they ought to find for the plaintiff.' Concede that it was through either passion or mortification or fear of disgrace because of this rumor, and instead of killing himself he had killed his brother, or some one else whom he suspected of being connected with the rumor, should this transaction of mortification or fear of disgrace have exempted him from criminal responsibility? If so, then indeed the more violent the passion and desperate the deed the more secure from punishment will be the perpetrator of homicide or other crimes. . . . The doctrine of moral insanity, ever dangerous as it is to the security of the citizen's life, and pregnant as it is with evils to society, has but little or no application to this case. Too uncertain and intangible for the practical consideration of juries, and unsafe in the hands of even the most learned and astute jurist, it should never be resorted to for exemption from responsibility save on the most irrefragable evidence, developing unquestionable testimony of that morbid or diseased condition of the affections or passions so as to control and overpower or subordinate the will before the act complained of; for, if *the act* is to be evidence of moral insanity for the suicide, so it will be for the homicide, the parricide, and the seducer and the ravisher."

[§§ 179–182 are omitted in this edition as superseded by other material.]

Analysis of objections to "moral insanity."

§ 183. Irresponsibility from a supposed moral derangement, unaccompanied with mental insanity, is a defence on which, at the risk of repetition, it is important to dwell with some minuteness. It is to be met with in three ways:

first, psychologically, by showing, as will hereafter be done,[1] that by sound psychological analysis such a position is untenable; secondly, practically, by proving that a careful induction gives us no basis of fact on which such a theory can be supported;[2] and, thirdly, judicially,[3] by showing that the position is repudiated by the courts, and that, on the principles of philosophic jurisprudence, it cannot safely be maintained.

§ 184. On the last point, as above stated, a few observations may now be made.

Doctrine inconsistent with safety of community.

First, as to the consistency of this doctrine with the safety of the community, which is one of the prime objects of all penal law.

In the mediæval jurisprudence, the clergy were exempted from the operation of the secular law. Great evils resulted from this; the authority of the civil arm was weakened, and the clergy themselves were demoralized. But for this position, monstrous as it was, there was some faint excuse at the time it was introduced. The clergy, it was said, were *good* men, and they were subject to ecclesiastical discipline which was prompt, exhaustive, and severe. But the proposition now is to exempt from the operation of penal law a class of men whose plea for this distinction is that they are eminently *bad*, and that there is no other discipline to which they can be subjected. If they are mentally insane—if they are destitute of reason—then there is good ground for penal irresponsibility. But if they are not mentally insane—if they are possessed of reason—if their only plea is their excessive badness—then this badness will be intensified, and rendered all the more turbulent and desperate by the very intellectual sanity which it is conceded that the actors possess, and which will readily instruct them that they are privileged by the state to plunge irresponsibly into any excesses they may desire. If they were destitute of reason, their irresponsibility would be a less grievance. They would be like the savage to whom powder is given, but who does not know how to contrive means for using it to destroy others. But, being possessed of reason, they are able to use their irresponsibility as an immunity for every crime. And what is to be done with them?

[1] *Infra*, §§ 533–539.

[2] *Infra*, §§ 552–572.

[3] See *supra*, § 163, for a particular enumeration of the adjudicated cases.

Confinement in a lunatic asylum, is the answer. But such confinement is difficult, (1) from the skill with which reason can create counter-proof, and can, when there is an object for it, suppress or conceal passion, and (2) from the enormous expense and trouble which would attend the incarceration of so large a number of patients as is here supposed. But can such persons be justly, on this hypothesis, incarcerated? How does incarceration differ from imprisonment? And what is imprisonment but punishment? And what would such punishment be but a penal discipline imposed compulsorily by the law? The difference between such penal discipline, and that which the law now applies on conviction of a crime, is simply, that in the first case the offender is tried for being generally bad; in the second, he is tried for a specific bad act. But he cannot be tried for being generally bad, unless he is responsible. We are therefore reduced to the dilemma either of allowing such persons to roam at large, or of confining them, which assumes their responsibility.

State must enforce exercise of reason.

§ 185. Again, it is the duty of the state to require, on the part of all persons endowed with reason, the exercise, under penal discipline, of such reason, in all matters which concern the safety and health of the body politic. The state, in this respect, is a delicate machine, over whose mechanism every rational man has more or less control. It may seem hard, to adopt the analogy of a railroad, to make it an indictable offence for a brakeman simply to fall asleep at his post, or for the acting superintendent of a great corporation not to construct a time-table sufficiently lucid and accurate to prevent possible collisions. It may seem a hard thing to shoot an admiral of acknowledged bravery for indecision in action, or to cashier and imprison an engineer for a slight miscalculation as to the thickness of an iron plate. Yet we all feel the necessity of such hardness for the purpose of educating men at large in the exercise of all their faculties when in discharge of public trusts. It is such discipline alone that makes railway travel practicable, and that prevents a nation's life from being carelessly sacrificed in war. Reason, in such cases, is called forth, nerved, and pointed, by the penalty the law imposes on its action. One of the chief functions of law is to educate by penalty. Law cannot, except in certain very rare cases, command a thing to be done. It can only punish when the thing is not done,

or when a positive wrong is committed. Nor can it thus punish by precept, or by mere expression of disapprobation. It must punish, if it do so at all, by penal discipline; and this discipline, to have a moral effect, must be executed as announced. In other words, supremacy of reason over passion, on the part of all persons possessing such reason, is essential to the safety of the state; and the state is bound to educate its subjects to the exercise of their reason to this extent. It needs careful engineers, careful sailors, careful superintendents, and careful workmen; and, to create this carefulness, it must impose penalties on carelessness. *A fortiori*, therefore, if it needs, among those concerned with its machinery, the capacity to control passion by reason, must it impose penalties on the yielding of reason to passion. This subordination among its subjects, it is one of the highest offices of the state to create; but its only direct process for this purpose is by penal discipline. This may, in some cases, work hardly, as it may do in the cases of railway carelessness we have just noticed. But, in the one case as in the other, it is the idea of *responsibility* that must be implanted in each breast; and this can only be done by exacting responsibility among persons possessed with reason, as a general and absolute rule.

§ 186. Then, as to the effect of these views on the individual himself. If scrutinized carefully, the doctrine of the indissolubility of the connection between reason and responsibility can give no ground of personal complaint. Even among "moral lunatics" there is no one of whom we can say that, in the earlier stages of his life, he might not have been taught self-control. It would be a most cruel thing for a parent to say to a young child, "you are so bad that I will not try to reform you." And it would be an equally cruel and destructive thing to say, "for the wrong you do I will not correct you."[1] This would be the sure course to bring up an irreclaimable class of bad men. But, while it is one of the chief peculiarities of Christianity to teach that no sinners are irreclaimable, so it is one of the most merciful offices of government to say to all men that they can be reclaimed. To rational beings who are supposed to have subordinated their reason to their passions, we can imagine no more humane

Not to reform guilt is to encourage it.

[1] See *supra*, §§ 115–118; *infra*, §§ 403, 539.

counsel to be spoken than this: "There is no such thing as irresponsibility among those possessed of reason; you will certainly be punished if you break the law." The doctrine, on the other hand, that irreclaimable guilt is irresponsible, is the sure way to *make* irreclaimable guilt.

Imprisonment should depend on conviction of specific crime.

§ 187. And again, even assuming their responsibility, which on this hypothesis cannot be assumed, to imprison "moral lunatics" on the charge of being "bad," instead of making imprisonment dependent on conviction for a specific crime, would be subversive of one of the primary features of Anglo-American jurisprudence. As an illustration of this we may mention the means proposed by Dr. Thomson, surgeon to the General Prison for Scotland, whose argument in favor of distinctive moral insanity is elsewhere noticed. Feeling the embarrassment of holding that a class of "moral lunatics," such as he describes, should be emancipated from criminal discipline in its ordinary sense, he seeks to relieve himself by a proposal not unlike that adopted in Turkey when it is thought desirable to crush out a rival family. "Moral insanity," he holds, is transmitted by sexual propagation; and hence "moral lunatics," or the incurably wicked, are to be kept from having children. But how? By the Turkish method? For this more summary and inexpensive process, Dr. Thompson is not quite prepared. Another remedy, however, is preferable, imprisonment during puberty. "Why," he asks, "should they go to prison for short periods only, to be sent out again in renovated health, to propagate a race so low in physical organization?" He afterwards proposes, for such cases, imprisonment for life. The latter, no doubt, is the only safe alternative, if we accept the doctrine of moral insanity. The dilemma, therefore, may be thus stated: if we accept the doctrine of moral insanity, we must imprison the "moral lunatics" for life, on charge of being generally bad; if we reject this doctrine, we submit such persons to ordinary penal discipline. But the first alternative is both cruel and incompatible with Anglo-American jurisprudence. We must therefore take the second.

Moral sense to be built up by state.

§ 188. Nor, finally, can it be said that there are some men, who, while possessed of reason, are incapable of moral sense, and who are consequently to be withdrawn from the ordinary operations of penal discipline. We have al-

ready noticed the cruelty of this position to the persons thus described, and the repugnance of the mode of imprisonment it proposes to the principles of Anglo-American Jurisprudence. It is enough now to say that, where the state does not *find* a moral sense, it is its duty to *create* one. That there is, among rational beings, a moral sense always coexisting with reason, it is not necessary here to maintain; and it may be enough, for this purpose, to refer to the impressive exposition of this view published by a great English thinker lately (1872) deceased.[1] But, if we assume that there is no such moral sense, then comes in the position just noticed, that the moral sense which the state does not *find* it must *build up*.[2]

§ 189. Even, therefore, should we assume that there are cases in which there is no moral sense or conscience, and in which the individual so constituted is left to the control of his appetites and passions alone, it does not follow that punishment is not to be imposed. No more strenuous advocates of punishment are to be found than among the philosophers who deny the existence of conscience. To except, they argue, those whose moral sense is perverted or extinct, is to except the very class for whose benefit, as well as for the safety of the community, the law is required.[3] But we must go beyond this and hold that wherever there is reason there is responsibility, and wherever there is responsibility there the wrong-doer is to be punished as a matter of justice in proportion to his wrong.[4]

Efficiency of penal discipline for this purpose.

[1] "The Conscience;" Lectures on Casuistry, delivered in the University of Cambridge, by F. D. Maurice. 2d Edition, 1872.

[2] See also *infra*, § 486.

[3] See also *supra*, § 115; and *infra*, § 403.

[4] Wh. Cr. L. 8th ed. § 1 *et seq.*

In the International Review for October, 1881, is a valuable article by Dr. Hammond on the "Punishability of the Insane," from which the following is extracted:—

"An individual may be medically insane, and yet not a lunatic in a legal sense. His brain is diseased, either temporarily or permanently; his mind is not in all respects normal in its action, and yet he is responsible for his acts. Many of the insane are clearly irresponsible, and their punishment is demanded only by the imperative necessity which exists of securing the safety of society by preventing their committing criminal acts. This should be done in that way which experience shows is most conducive to the accomplishment of the end in view, even if it involves the taking of the life of the lunatic. But there are others, people with morbid impulses—with delusions as to their mission as reformers, messengers of God, etc.; with intense egotism and desire for

5. *While experts may be called to testify as to states of mind and conditions of health, it is for the courts to declare whether such states and conditions constitute irresponsibility.*

§ 190. Such, as the preceding pages have indicated, has been the general practice both in England and the United States. In 1870, however, in the supreme court of New Hampshire, a case[1] was decided by which this position was in some measure assailed. The defendant, Pike, was tried before Perley, C. J., and Doe, J., for murder in perpetrating robbery. One of the defences appears to have been "dipsomania," and on the trial the court instructed the jury that "whether there is such a mental disease as dipsomania, and whether defendant had that disease, and whether the killing of Brown was the product of such disease, were questions of fact for the jury."

Such the general rule. Exception in New Hampshire.

§ 191. In the supreme court, this was affirmed, Smith, J., saying: "This was correct. If there are any diseases whose ex-

notoriety, manifestly abnormal in character; with tendencies toward the performance of eccentric and unusual acts; with a total disregard for the restraints upon individual indulgence which a decent sense of the opinions of mankind requires; of excessively-developed passions, which lead them to the commission of various bestial crimes—but who nevertheless show little or no want of intellectual power (indeed this is often above the average), who transact their every-day routine work with regularity and precision, and who reason logically and clearly on the subject of their particular point of aberration. Such people are medically insane; their mental processes are radically different from those of mankind in general; there is some defect, inherent or acquired, in the organization of their nervous systems; and the medical expert who goes into court and testifies to the fact of their insanity is entirely justified, by the accumulated experience of those most competent to know, in so doing. They are insane from a medical standpoint, but they know right from wrong; they know legal acts from illegal ones; they are able at some time at least to control their propensities, and their delusions may be entirely without reference to the alleged criminal act they may have committed. *While a knowledge of right and wrong can never be properly regarded as a test of insanity, it is a test of responsibility; and by knowledge of right and wrong is not meant the moral knowledge that a particular act would be intrinsically right or wrong—in other words, a sin—but that it would be contrary to law.* In reality, however, the individual may not even have this knowledge; but he must have, in order to make him responsible, the mental capacity to have it." See also 15 Am. L. Rev. 717.

[1] State *v.* Pike, 49 N. H. 399.

istence is so much a matter of history and general knowledge that the court may properly assume it in charging a jury, dipsomania certainly does not fall within that class. The court do not profess to have the qualifications of medical experts. Whether there is such a disease as dipsomania is a question of science and fact, not of law."

Opinion in this case. State *v.* Pike.

In an opinion, delivered in the same case, and supporting the same view, Doe, J., went still further: "Whether the old or the new medical theories are correct," he says in the course of his argument, "is a question of fact for the jury; it is not the business of the court to know whether any of them are correct." "It is often difficult to ascertain whether an individual had a mental disease, *and whether an act was a product of that disease;* but these difficulties arise from the nature of the facts to be investigated, and not from the case; they are practical difficulties to be solved by the jury, and not legal difficulties for the court." "To say that the expert testifies to the tests of mental disease as a fact, and the judge declares the test of criminal responsibility as a rule of law, is only to state the dilemma in another form. For, if the alleged act of a defendant was the act of his mental disease, it was not in law his act, and he is no more responsible for it than he would be if it had been the act of his involuntary intoxication, or of another person using the defendant's hand against his utmost resistance; if the defendant's knowledge is the test of responsibility in one of these cases, it is the test in all of them. If he does know the act to be wrong, he is equally irresponsible whether his will is overcome, and his hand used, by the irresistible power of his own mental disease, or by the irresistible power of another person. When disease is the propelling, uncontrollable power, the man is as innocent as the weapon—the mental and moral elements are as guiltless as the material. If his mental, moral, and bodily strength is subjugated and pressed to an involuntary service, it is immaterial whether it is done by his disease, or by another man, or a brute, or any physical force of art or nature set in operation without any fault on his part. If a man knowing the difference between right and wrong, but deprived, by either of those agencies, of the power to choose between them, is punished, he is punished for his inability to make the choice—he is punished for incapacity; and that is the very thing for which the law says he shall not be punished. He

might as well be punished for an incapacity to distinguish right from wrong, as for an incapacity to resist a mental disease which forces upon him its choice of the wrong. Whether it is a possible condition in nature for a man knowing the wrongfulness of an act to be rendered by mental disease incapable of choosing not to do it and of not doing it, and whether a defendant in a particular instance has been thus incapacitated, are obviously questions of fact. But, whether they are questions of fact or of law, when an expert testifies that there may be such a condition, and that, upon personal examination, he thinks the defendant is, or was, in such a condition—that his disease has overcome, or suspended, or temporarily or permanently obliterated, his capacity of choosing between a known right and a known wrong—and the judge says that knowledge is the test of capacity, the judge flatly contradicts the expert. Either the expert testifies to law, or the judge testifies to fact. From this dilemma, the authorities afford no escape.

"The whole difficulty is, that courts have undertaken to declare that to be law which is a matter of fact. The principles of the law were maintained at the trial of the present case, when, experts having testified as usual that neither knowledge nor delusion is the test, the court instructed the jury that all tests of mental disease are purely matters of fact, and that, if the homicide was the offspring or product of mental disease in the defendant, he was not guilty by reason of insanity."

§ 192. Is, then, responsibility a question of fact, to be determined by the jury on the testimony of experts? Is the judge, on issues of insanity, to leave the whole question, including that of responsibility, to experts to decide, telling the jury that they are to accept the experts' rendering? Is, in other words, the "test of criminal responsibility" a matter of fact, to be deposed to by experts, and found by the jury on their testimony? Such are the questions that are involved in the positions just stated, and which are now to be discussed.

§ 193. It is conceded by the learned judge who delivered the opinion which has last been quoted, and which maintains the affirmative of the points just stated, that the views he advances are in conflict with the great body of English and American decisions on the same topic. This, in fact, will be abundantly verified by an inspection of

Prevalent opinion is that question of irresponsibility is for court.

the preceding pages, where the course of English and American judicial precedent in this relation is exhibited. It is proposed now to pass the question of authority, therefore, as one that does not admit of dispute, and to adduce some general reasons to show why, so far from accepting the positions which have been so ably maintained by the New Hampshire judges, we must reaffirm the view already announced—that, while experts may be called to testify as to states of mind and conditions of health, it is for the court to declare whether such states and conditions constitute irresponsibility.

Difficulty in obtaining full expert testimony.

§ 194. First, let it be remembered that American common law courts have no process for the collection of the opinions of experts on litigated questions of criminal responsibility. A case comes on to be tried in one of our criminal courts. In the great majority of our jurisdictions there is no law by which a commission can issue to take the deposition of witnesses out of the reach of local process. Even in those jurisdictions where such a law exists, there is no reported case of a witness, residing at a distance, being examined by deposition. Indeed, even where this is technically legal, the step is one which parties would be very unlikely to take. An expert, in order to give an opinion to which the jury will attach weight, must visit the patient personally. Hence it is that practically, in seeking for experts, the parties are limited to those whom they can produce on trial. Of course, when there is wealth, or when the state makes, as it very rarely does, suitable provision, experts may be brought from a distance. But, whether brought from a distance or taken from the immediate neighborhood, they are open to the very serious objection that they are unofficial persons selected by the party calling them because their preascertained views will serve that party's necessities.[1] For we have in none of our states governmental boards of experts, chosen as independent arbiters, on the same basis as our courts of law. Hence it is that the experts, whose testimony the jury are to take, are simply volunteer theorists. So far as concerns the defendant, they are called by him because,

[1] See *infra*, § 295. See an article advocating a commission of experts to be appointed partly by the court and partly by the parties, in 30 Am. Journ. Ins. 312.

from their opinions already advanced, their views favor his defence. It is by the defence, indeed, that testimony of experts, in issues of insanity, is mainly produced. It is natural that it should be so, for not only is the burden of proof on the defence, but the interest the defendant has at stake is so enormous that his whole energies, and his entire estate, as well as the full professional nerve and pride of his counsel, will be exhausted in bringing his case fully before the court. Just so far as the prosecution takes an interest in the case—just so far as it believes in the baselessness of the defence—is it liable to be influenced by the same zeal. But there is here a difference between the position of the defence and that of the prosecution. The defence springs its witnesses, if not its particular point of reliance, on the prosecution. The prosecution has generally to reply, as best it can, with any testimony which, at the moment and spot, it can catch up.

Such testimony is partial and imperfect.

§ 195. But, be this as it may, each party has certain theories to be proved, and each party looks around for experts to prove such theories. Now, it so happens, that there is scarcely a single hypothesis as to responsibility, no matter how wild, which, among the large number of experts who have concerned themselves with this branch of study, has not its advocates. Some particular hypothesis is a convenient one for the emergencies of the case, and consequently the expert who believes it is sought out and summoned. But he and the few, as it may be, who agree with him are summoned alone. The great mass of experts, embracing ninety-nine hundredths of the entire body, are left uncalled. There is undoubtedly one good physical reason for this. No court-room, though as large as the Roman amphitheatre, could hold all those who on this topic have fair claims to be considered experts. No state treasury would attempt the expense of their maintenance and remuneration during the very protracted investigations that would ensue. No court would have time for such trials; and, indeed, it would be impossible to tell how long such a suit would continue. No humane government would permit a course which, by thus confining all the experts of the land (even if we stopped here) in one spot, for an indefinite period, would leave their innumerable patients and wards for so long a time without guidance. But, independently of this objection, reason

enough for a narrow selection is found in the fact that each party calls only the experts that will prove his case, and no more.[1]

§ 196. Now, how has this practically resulted? We believe that the reports of our criminal trials show that wherever it is necessary to rely on some extravagant and unique psychological theory to make out a defence, this theory will be sustained by experts. Thus, in a remarkable Kentucky case, hereafter to be more fully noticed,[2] it was testified by experts, and apparently without contradiction, that all persons committing suicide are insane, and that consequently (a conclusion in which fortunately the court did not coincide), the exception of suicide in life-insurance policies is a nullity. So in the case of Arthur O'Connor, who was tried in London, in April, 1872, for an assault on the queen, Dr. Tuke testified to the prisoner's insanity, because he had no sense of his situation, and because he "argued in a circle," which facts were declared by an opposite medical expert to prove just the contrary, while Dr. Sheppard, Professor of Psychological Medicine in King's College, and head of the Colney Hatch Asylum, announced, in an article in the *Lancet*, that Dr. Tuke's position was "monstrous." In Andrews' case,[3] where the defence was *mania transitoria*, one physician (a gentleman highly respectable, but standing almost alone on this question) was brought to testify to the psychological soundness of the defence; while the prosecution limited itself to but one expert in reply, though it could have found a thousand to indorse what that expert said. So in the case now immediately before us, "dipsomania" is spoken of as proved by medical experts; and it is said to be the law that if these experts declare that there is such a disease as "dipsomania," and that "dipsomania" confers irresponsibility, then the defendant is irresponsible.[4] But what experts? Who are to declare this?

Extravagance of the theories it brings out.

[1] See *infra*, §§ 275, 293. See also articles in 35 Am. Journ. Ins., pp. 1, 375. A curious proof of this will be found in an article by Dr. Yellowlees on Barr's trial, 22 Journ. Ment. Sci., p. 235. He tells us that, testifying as an expert, neither side asked his opinion as to the prisoner's power of self-control—whether it was overcome by the delusion—one side fearing that he would go too far and the other side knowing he would not go far enough. Scientific evidence, he says, is always hampered when given by way of question and answer.

[2] Ins. Co. *v.* Graves, 6 Bush, 268; *infra*, § 236.

[3] *Supra*, § 162.

[4] The unsoundness of the hypothesis of "dipsomania" will be hereafter shown, *infra*, § 639.

Those selected by the defendant out of the small knot of psychological physicians who hold to this theory? And is the court to be bound by the views of those experts, supposing the prosecution declines to reply, or replies imperfectly? Is the judge to shut his eye to the fact that by almost all modern psychologists—by all the governmental forensico-legal experts of Germany, by whom such great breadth and ability of diagnosis are exhibited, and by whom such unparalleled patience and compass of induction are exercised—by at least the great majority of English and American alienists—the theory of distinct moral monomania, the mind remaining sane, is not only repudiated but denounced? But how is this fact to be shown? The prosecution has not means or time, even if it has the desire, to bring these eminent men to the witness-stand. There is no process, in other words, by which the true sense of experts, taking them as a body, can be obtained. The test, therefore, is one which, from the inadequacy of our judicial machinery, we cannot apply.[1]

No tribunal exists to decide conflict of experts.

§ 197. But, again, even supposing experts of conflicting views could be fairly and freely summoned, so as to give the jury the full testimony of science on the questions in litigation, there is no court of experts who can harmonize antagonistic views, and give to the jury in a concrete shape a positive and final judgment. In *legal* practice, from the fact that in each state there is a final court of appeal, this difficulty is obviated. We all know what the law is; or, if we do not, we have the means, in each litigated case, of ascertaining such law. And in this certainty, at least as much as in the wisdom of the

[1] See *infra*, § 295. A correction of this has been, it is true, attempted in New York; by the Revised Statutes (Part I. ch. xx. § 20), the court of oyer and terminer, where "any person in confinement under indictment for the crimes of *arson*, *murder*, or *attempt at murder*, or *highway robbery*, shall appear to be insane," is given power summarily to inquire into the question, and, for this purpose, to "appoint a commission to examine such person and inquire into the facts of his case and report thereon to the court," which may then act on the case, and in its discretion remand the party to the lunatic asylum. The governor is given the same power in capital cases; and, by § 26, the county judge may investigate the cases of persons confined under other than civil process, who appear to be insane, and shall "call two respectable physicians and other credible witnesses," and if necessary impanel a jury.

opinions promulgated, lies our safety. Take, for instance, to repeat a prior illustration, the question of moral insanity. If moral insanity be established by the courts, then the legislature can take measures to have all persons "morally insane" placed in insane asylums, so that no injury to the community can ensue from their running at large. Or, if the courts hold that "moral insanity" is not a defence, then persons of this class will be held responsible penally for their misdoings, or placed under bonds to keep the peace. But if the rule is to be laid down by experts called freshly in each particular case, with no court of appeal, it will be impossible to have any settled law. The experts selected in one case will prove entirely a different law from the experts selected in another case. For instance, in those cases in which the state takes the prosecution in its own hands, and calls, as is the practice in some jurisdictions, leading specialists in this department as witnesses, the prevalent testimony will be that there is no such thing as either monomania or "moral insanity" as a distinct insane affection. On the other hand, in a case in which the defendant's mental sanity is indisputable, and his life may depend on his proving that "moral insanity" is a good defence, experts who hold to "moral insanity" are called to prove that it exists; and "moral insanity" is so far established. From neither of these decisions is there any appeal. There is no mode of harmonizing them. Nor is it possible to tell what the future may bring forth, except that each party will call such experts as are most favorable to his views. Now, to speak of the opinions of such exceptional experts as the opinions of experts in general, and declare it to constitute the rule of insanity, is about as reasonable as it would be to speak of the arguments of counsel employed to argue on a series of isolated cases, as constituting the law of the land. The fact is there is no settled and final opinion of experts, to supply the test which is here invoked, because there is no final court by whom conflicts among experts can be reconciled, and a settled law pronounced.

Court must weigh testimony of the experts.

§ 198. But, after all, we must next observe that the proposed submission of the test to experts for decision is an illusion, for the court will have to explain what it is that the experts say. No court can abdicate its functions of weighing testimony and of declaring what testimony means. It is, indeed, a fundamental maxim of the law that witnesses are

not to be counted, but weighed. Let us take, as illustrating this necessity, the celebrated Windham case, elsewhere more fully noticed.[1] A petition of lunacy was taken out against Mr. Windham, his nearest relatives being the petitioners. His course was shown to have been since his boyhood—at the time of the inquisition he was not much older than twenty-one—one of reckless and imbecile profligacy; and some of the most eminent experts, called for the petitioners, declared that he was wanting in capacity to manage his own affairs. But the testimony thus produced was overborne, as to numbers, by a mass of other experts, who, on examination far more superficial, and on tests far less thorough, pronounced for the respondent's competency.[2] Of course in such cases there was but one course open to the master in lunacy by whom the inquisition was held. His duty was to say where the weight of the testimony was, and by what tests it was to be proved. So it must always be in cases of conflict of evidence. Yet to declare, supposing the testimony of experts to be "law," where the weight of this testimony lies, is really to declare what the law itself is.[3]

And decide upon it.

§ 199. Nor can harmony be by any other course adjusted between civil and criminal law. In many classes of probate cases the question of a testator's sanity is taken from the jury and determined exclusively by the court. In all civil issues this is forced by demurrers either to the pleading or to the evidence. Even on jury trials, the legal relations of the testimony of experts can be removed by bills of exceptions, or by appeal, to the superior court. To declare that in criminal cases such questions are solely for the jury, guided by experts, would be to introduce not merely clashing of courts, but failure of justice. A man would be sane by one class of proceedings, and be insane by another. After being declared responsible by an inquisition of lunacy, he might be de-

[1] See *supra*, § 106.

[2] Similar cases have occurred in the United States. See Winter's case, reported 27 Am. Journ. Ins. 47, and Com. *v.* Haskell, 2 Brewst. 491, in which Judge Brewster said: "If we look at the medical testimony, we find an even balance of numbers. Doctors Jones, Butler, Harbeson, and Berkey on the one side, and Doctors Morton, Groves, Seltzer, and Childs on the other, present a diversity of professional opinions. This is not unusual."

[3] See more fully, as to weight to be attached to testimony of experts, *infra*, § 293.

clared irresponsible by a jury on an indictment for crime; and thus would he be too irresponsible to be punished as a criminal, and yet not irresponsible enough to be placed in an insane asylum. Or, under the direction of experts of opposite views, a man who, in a civil court, would be held insane, might be convicted by a jury as sane, without any right, on the hypothesis here combated, of appealing to the court for redress.

Lastly, responsibility is a judicial question.

§ 199 *a*. But, finally, we must fall back on the position already fully argued, that the question of irresponsibility is one that cannot, consistently with public justice, be surrendered by the courts. Responsibility is a judicial question. It is one of the highest grade. It touches the most cherished prerogative of citizen and state. It involves in its criminal relations two topics, both of which are in the range of juridical philosophy, and both of which should be decided, in each case that arises, by officers of the state, appointed by the state, bound by fixed rules, and advised, before they decide, by counsel who will present both sides of the question at large. One of these topics is the relation of responsibility to reason, and here arises the principle, heretofore discussed on grounds purely juridical,[1] that wherever there is reason there is responsibility. The other topic is that of the divisibility of the Ego into distinct factors, one of which can become insane while the other is sane; and in this is involved the position, hereafter to be vindicated,[2] that there is no such thing as moral insanity coexistent with mental sanity. These points are not to be finally adjudicated by experts, who are neither appointed by the state so as to be independent of special influence, nor are selected from their general judicial fitness, nor are bound by precedent, nor are advised, before they come to a decision, by counsel presenting fully both sides. Experts are no doubt to give facts, though their explorations of facts should not be made without notice to the opposite side. But questions of high philosophical jurisprudence such as these, bearing as they do most closely on the liberty of the citizen and the safety of the state, should be decided by judges, who, appointed by the state, independent of the parties, and advised by counsel, remember that their decision is to be part of a harmonious and equal system of public law, and that for their rendering of it

[1] See *supra*, §§ 110, 185–188.

[2] *Infra*, §§ 533–572.

they are responsible to the state from which their appointment proceeds.[1]

6. *Predisposition to insanity as lowering the grade of guilt.*

Capacity of party measure of guilt.

§ 200. It has already been abundantly shown that there are conditions of mind in which actual insanity cannot be said to have set in, but in which there are insane predispositions tending to either undue mental exaltation, or undue mental depression.[2] A psychical condition, inherited, it may be, or the result of some physical cause, makes the patient incapable, when excited, of due deliberation, renders it difficult for him to cool, or disturbs his mind when it comes to act on the question of intent. Such a man, for instance, in an excitement which this psychical state makes far more intense and protracted than it would be among persons of ordinary mental health, kills another. Is he to be acquitted? Certainly not; for he cannot, on any sound principles psychological or legal be declared insane. Is he to be convicted of murder in the first degree, and hung? This, were the defendant a person of healthy and normal temperament, would be perhaps the natural sequence of the trial, should it appear that the homicide was deliberately executed. But, suppose the case of a man who, from insane predisposition, instead of cooling down after the first flush of hot blood, falls into a state of morbid excitement continuing and perhaps growing for weeks. Is such a man to be judged, as to a homicide committed during such excitement, by the same rules as apply to a person whose passions have had time to subside? In other words, are "cooling time," and "intent" and "premeditation," to be gauged by the capacity of the ideal rational man, or that of the person under trial? That the latter view should be taken—that we should determine these questions according to the capacity of the defendant himself, has been already incidentally argued, and may be confirmed by many analogies of penal jurisprudence. In this way do we judge those conceptions of danger which justify a party in resorting to violent means of self-defence;[3] so do we determine responsibility in cases of sleep-drunkenness and somnambulism; so do we estimate the conduct of

[1] See, as to expert testimony in insanity, Wh. Cr. Ev. § 417.

[2] *Supra*, § 181.

[3] *Supra*, §§ 125–145.

persons when roused by any great political or religious excitement;[1] and so we hold in cases of intoxication, when called upon to measure deliberation and intent.[2] If, in cases where homicide has been committed during an excitement which the defendant's peculiar psychical state has abnormally protracted and intensified, a verdict of murder in the second degree, or of manslaughter, is given in accordance with these views, a result is reached which is not only in accord with sound principle, but is far more consistent with the public idea of justice than would be a verdict either of not guilty, or of murder in the first degree.[3] This, in fact, is, under the North German code, the established law in Germany. That it is recommended by high medical authority, will be hereafter seen. Mr. Stephens lends his valuable authority to the same view.[4] "Partial insanity" he says, "may be evidence *to disprove the presence of the kind of malice required by the law to constitute the particular crime of which the prisoner is accused.* A man is tried for wounding with intent to murder. It is proved that he inflicted the wound under a delusion that he was breaking a jar. The intent to murder is disproved, and the prisoner must be acquitted; but if he would have no right to break the supposed jar, he might be convicted of an unlawful and malicious wounding."

7. *Capacity of insane defendants to plead.*

§ 200*a*. By statutes existing in England, and in several of the United States, it is competent for the defendant's counsel to formally plead insanity, as a special preliminary defence, in which case an inquest is taken to determine the issue, "sane or insane."[5] Where a jury is impanelled to try whether a prisoner is insane or not at the time when he is

Preliminary inquest on formal plea of insanity.

[1] Wh. Cr. L. 8th ed. § 47.

[2] See *infra*, §§ 211–214, and see particularly Roberts *v.* People, 19 Mich. 401, *infra*, § 211.

"I believe that the criminal insane should be held just as responsible to human punishment—*i. e.*, preventive and educating punishment—as sane criminals. Society must protect itself against crime more intelligently, yet more rigidly, than it now does."—Dr. Seguin, in *North Am. Rev.*, Jan. 1882, p. 21.

[3] See, in illustration of this, McGregor's case, reported and commented on, 23 Am. Journ. Ins. 549.

[4] Criminal Law of England. London, 1863, p. 92.

[5] See R. *v.* Goode, 7 A. & E. 536; R. *v.* Dwerryhouse, 2 Cox, C. C. 446.

brought up to plead to an indictment, the counsel for the prosecution is to begin and call his witnesses to prove the sanity of the prisoner.[1] But, where a jury is impanelled, at the instance of the counsel for a prisoner, to try whether he was insane or not at the time of the commission of the offence, the burden, in English practice, is on the defence.[2]

Insane defendant incompetent to plead.

§ 201. Where the defendant from insanity is incapable of pleading, the court will disregard his plea of guilty, or any confessions of guilt he may offer. And even his protestations of "sanity" will be disregarded, if there be adequate proof that he is insane.[3] The defence of insanity may be taken by his counsel against his will, though he may be personally allowed to call witnesses to disprove it.[4]

The practice in respect to pleading by persons deaf and dumb is discussed fully in another work.[5]

[1] R. *v.* Davies, 6 Cox, C. C. 326; 3 C. & K. 328.

[2] R. *v.* Turton, 6 Cox, C. C. 385.

[3] R. *v.* Pearce, 9 C. & P. 667.

[4] Ibid.; State *v.* Patten, 10 La. Ann. 299.

[5] Wh. Cr. Pl. & Pr. § 417. For pleading by lunatics see Wh. Cr. L. 8th ed. § 57.

CHAPTER V.

INTOXICATION AS A DEFENCE TO CHARGE OF CRIME.

1. *Permanent insanity produced by intoxication affects responsibility in the same way as insanity produced by any other cause.*
Delirium tremens an insane condition, § 202.
When complete extinguishes responsibility, § 203.
Such the law in this country, § 204.
But delirium must be strictly proved, § 205.
Delirium distinct from frenzy of drink, § 206.
2. *Temporary insanity, immediately produced by intoxication, does not destroy responsibility, where the patient, when sane and responsible, made himself voluntarily intoxicated.*
Mere drunkenness does not avoid responsibility, § 207.
This view necessary to public safety, § 208.
Sustained by all authority, § 209.
Drunkenness admissible to disprove specific intent, § 210.
3. *While intoxication per se is no defence to the fact of guilt, yet, when the question of intent or premeditation is concerned, it may be proved for the purpose of determining the precise degree.*
Degree may be determined by fact of drunkenness, § 214.
Same view taken in England as regards intent, § 215.
Unsettled opinion where provocation existed, § 216.
Drunkenness relevant on issue of malice, § 217.

1. *Permanent insanity produced by intoxication affects responsibility in the same way as insanity produced by any other cause.*

§ 202. If a man who, laboring under *delirium tremens*, kills another, is made responsible, there is scarcely any species of insanity which, on like principles, would not be subjected to the severest penalties of criminal law. "It may be the immediate effect," says Dr. Ray,[1] "of an excess, or series of excesses, in those who are not habitually intemperate, as well as in those who are; but it most commonly occurs in habitual drinkers, after a few days' total abstinence from spirituous liquors. It is also very liable to occur in this latter class

Delirium tremens an insane condition.

[1] Med. Jur. 438.

when laboring under other diseases, or severe external injuries, that give rise to any degree of constitutional disturbance. The approach of the disease is generally indicated by a slight tremor and faltering of the hands and lower extremities, a tremulousness of the voice, a certain restlessness and sense of anxiety which the patient knows not how to describe or account for, disturbed sleep, and impaired appetite. These symptoms having continued two or three days, at the end of which time they have obviously increased in severity, the patient ceases to sleep altogether, and soon becomes delirious. At first the delirium is not constant, the mind wandering during the night, but, during the day, when its attention is fixed, capable of rational discourse. It is not long, however, before it becomes constant, and constitutes the most prominent feature of the disease. Occasionally the delirium occurs at an earlier period of the disease, and may even be the first symptom of any disorder. This state of watchfulness and delirium continues three or four days, when, if the patient recover, it is succeeded by sleep, which at first appears in uneasy and irregular naps, and lastly in long, sound, and refreshing slumbers. When sleep does not supervene about this period, the disease is fatal; and whether subjected to medical treatment or left to itself, neither its symptoms nor its duration are materially modified. The character of the delirium in this disease is peculiar, bearing a stronger resemblance than any other form of mental derangement to dreaming. It would seem as if the dreams which disturb and harass the mind during the imperfect sleep that precedes the explosion of the disease continue to occupy it when awake, being then viewed as realities, instead of dreams. The patient imagines himself, for instance, to be in some peculiar situation, or engaged in certain occupations, according to each individual's habits and profession; and his discourse and conduct are conformed to this delusion, with this striking peculiarity, however, that he is thwarted at every step, and is constantly meeting with obstacles that defy his utmost efforts to remove. Almost invariably the patient manifests, more or less, feelings of suspicion or fear, laboring under continual apprehension of being made the victim of sinister designs and practices. He imagines that certain people have conspired to rob or murder him, and insists that he can hear them in an adjoining apartment arranging their plans and preparing to rush into his room; or that he is in a strange place,

where he is forcibly detained, and prevented from going to his own home. One of the most common hallucinations is to be constantly seeing devils, snakes, vermin, and all manner of unclean things around him and about him, and filling every nook and corner of his apartment. The extreme terror which these delusions often inspire produces in the countenance an unutterable expression of anguish, and, in the hope of escaping from his fancied tormentors, the wretched patient endeavors to cut his throat or jump from the window. Under the influence of these terrible apprehensions he sometimes murders his wife or attendant, whom his disordered imagination identifies with his enemies, though he is generally tractable, and not inclined to be mischievous. After perpetrating an act of this kind, he generally gives some illusive reason for his conduct, rejoices in his success, and expresses his regret at not having done it before."[1]

When complete extinguishes responsibility

§ 203. As far as concerns temporary incapacity, therefore, *delirium tremens* acts in the same way as any other *delirium*, and, when complete, destroys responsibility. The only question, therefore, is whether there is anything in the *source* from which it is derived which requires that it should be exempted from the general rule by which delirium forms a good defence to an indictment for a criminal offence. In the *dicta* of one or two of the older law writers, this exception is sought to be sustained on the ground that a drunkard, in every stage, is a voluntary demon, and that he can no more use his consequent mania as a defence than can the man who kills another by a sword allege that it was the sword, and not himself, that was the guilty agent. But to this the answer is threefold: (1) that *delirium tremens* is not the *intended* result of drink in the same way that drunkenness is; (2) that there is no possibility that *delirium tremens* can be voluntarily generated in order to afford a cloak for a particular crime; (3) that, so far as original cause is concerned, it is not peculiar in being the offspring of indiscretion or guilt, for such is the case with almost every other species of insanity. These points scarcely need to be expanded. The fact is, *delirium tremens* runs the same course with most of the other

[1] See an interesting case of *Oinomamia* in 8 Amer. Journ. of Insan. 3; and see *infra*, "Dipsomania," § 639.

classes of insanity known in the criminal courts. It is the result, like most other manias, of prior vicious indulgence; but it differs from intoxication in being shunned rather than courted by the patient, and in being incapable of voluntary assumption for the purpose of covering guilt.

Such the law in this country.

§ 204. Reason, therefore, undoubtedly teaches us that a person who is incapacitated from moral and intellectual agency, by reason of *delirium tremens*, is irresponsible; and such is the law, as decided in repeated instances.[1] Thus, in the leading American case, Story, J., declared criminal responsibility not to attach where the delirium is the "remote consequence" of voluntary intoxication, "superinduced by the antecedent exhaustion of the party, arising from gross and habitual drunkenness. However criminal," he proceeded to say, "in a moral point of view, such an indulgence is, and however justly a party may be responsible, for his acts arising from it, to Almighty God, human tribunals are generally restricted from punishing them, since they are not the acts of a reasonable being. Had the crime been committed when Drew (the defendant) was in a fit of intoxication, he would have been liable to be convicted of murder. As he was not then intoxicated, but merely insane from an abstinence from liquor, he cannot be pronounced guilty of the offence. The law looks to the immediate, and not to the remote cause; to the actual state of the party, and not to the causes which remotely produced it. Many species of insanity arise, remotely, from what, in a moral view, is a criminal neglect or fault of the party: as from religious melancholy, undue exposure, extravagant pride, ambition, etc. Yet such insanity has always been deemed a sufficient excuse for any crime done under its influence."

But delirium must be strictly proved.

§ 205. In a still earlier case of at least equal authority, the court told the jury that if they "should be satisfied by the evidence that the prisoner, at the time of committing the act charged in the indictment, was in such a state of mental insanity, not produced by the immediate effects of intoxi-

[1] R. *v.* Thomas, 7 C. & P. 817; R. *v.* Meakin, 7 C. & P. 297; Rennie's case, 1 Lew. C. C. 76; U. S. *v.* Drew, 5 Mason, 28; U. S. *v.* Forbes, Crabbe, 558; U. S. *v.* McGlue, 1 Curt. C. C. 1; Com. *v.* Green, 1 Ashm. 289; and other cases cited in Wh. Cr. L. 8th ed. § 48; 1 Hale, 32; 1 Russ. on Cr. 7; 4 Black. Com. 26.

cating drinks, as not to have been conscious of the moral turpitude of the act, they should find him not guilty."[1] And expressly to this very point is a more recent case, where a federal judge of high authority told the jury that, if the defendant was "so far insane as not to know the nature of the act, nor whether it was wrong or not, he is not punishable, although such *delirium tremens* is produced by the voluntary use of intoxicating liquors."[2]

[1] U. S. *v.* Clarke, 2 Cranch, C. C. R. 158; S. P. State *v.* Hundley, 46 Mo. 414.

[2] U. S. *v.* McGlue, 1 Curtis, C. C. R. 1. This case we give in full:—

The prisoner, who was second officer on board the barque Lewis, was indicted for the murder of the first officer of that vessel while on board. The defence was insanity. The other facts appear in the charge of the court.

Curtis, J. The prisoner is indicted for the murder of Charles A. Johnson. It is incumbent on the government to prove the truth of every fact in the indictment necessary in point of law to constitute the offence. These facts are in part controverted, and in part, as I understand the course of the trial, not controverted; and it will be useful to separate the one from the other. That there was an unlawful killing of Mr. Johnson; that the mortal wound was inflicted by the prisoner at the bar; that this wound was given and the death took place on board the barque Lewis; that Johnson was the first, and the prisoner the second officer of that vessel at the time of the occurrence; that the vessel at that time was either on the high seas, as is charged in one count, or upon waters within the dominion of the Sultan of Muscat, as is charged in another count; and that the prisoner was first brought into this district after the commission of the alleged offence—do not appear to be denied; and the evidence is certainly sufficient to warrant you in finding all these facts. It is not upon a denial of either of these facts that the defence is rested, but upon the allegation by the defendant, that at the time the act was done he was so far insane as to be criminally irresponsible for his act. And this brings you to consider the remaining allegation in the indictment which involves this defence. It is essential to the crime of murder that the killing should be from what the law denominates malice aforethought, and the government must prove this allegation.

Now, if you believe the evidence, there can be no question, that the killing was malicious, provided the prisoner was at the time in such a condition as to be capable, in law, of malice. If he was then so insane that the law holds him irresponsible, it deems him incapable of entertaining legal malice; and one main inquiry in this case is, whether the prisoner, when he struck the blow, was so far insane as to be held by the law irresponsible for intentionally killing Mr. Johnson.

Some observations have been made by the counsel of each side respecting the character of this defence. On the one side it is urged that the defence of insanity has become of alarming frequency, and that there is reason to believe that it is resorted to by great criminals to shield them from the just consequences of their crimes; that there exist in the community certain theories concerning what is called moral insanity, brought forward on trials of this kind, tending to subvert

When *delirium tremens* is set up as a defence, the prisoner must show that he was under a delirium at the time the act was perpe-

the criminal law, and render crimes likely not to be punished. On the other hand, the inhumanity and injustice of holding him guilty of murder who was not at the time of the act a reasonable being, have been brought before you in the most striking forms.

These observations of the counsel on both sides are worthy of your attention, and their effect should be to cause you to follow steadily, carefully, and exactly, the rules of law upon this subject. The general question, whether the prisoner's state of mind when he struck the blow was such as to exempt him from legal responsibility, is a question of fact for your decision. But there are certain rules of law which you are bound to apply, and the court, upon its responsibility, is to lay down; and these rules, when applied, will conduct you to the only safe decision.

You will observe, then, that this defence of insanity is to be tested and governed by principles of law, and not by any loose general notions which may be afloat in the community, or even the speculations of men of science; and I now proceed to state to you such of them as are applicable to this case.

The first is, that the defendant must be presumed to be sane till his insanity is proved. Men, in general, are sufficiently sane to be responsible for their acts. To be irresponsible because of insanity is an exception to that general rule. And, before any man can claim the benefit of such an exception, he must prove that he is within it.

You will, therefore, take it to be the law, that the prisoner is not to be acquitted upon the ground of insanity, unless upon the whole evidence you are satisfied that he was insane when he struck the blow.

The next inquiry is, What is meant by insanity? What is it which exempts from punishment, because its existence is inconsistent with a criminal intent? Clearly, it is not every kind and degree of insanity which is sufficient. There are, undoubtedly, persons of great general ability, filling important stations in life, who, upon some one subject, are insane. And there are others whose minds are such that the conclusions of their reasons and the results of their judgments are very far from right. And others whose passions are so strong, or whose conscience, reason, and judgment are so weak, so perverted, that they may, in some sense, be denominated insane. But it is not the business of the law to inquire into these peculiarities, but solely whether the person accused was capable of having, and did have, a criminal intent. If he had, it punishes him; if not, it holds him dispunishable. And it supplies a test, by which the jury is to ascertain whether the accused be so far insane as to be irresponsible. That test is the capacity to distinguish between right and wrong as to the particular act with which he is charged. If he understands the nature of the act, if he knows that it is criminal, and that if he does it he deserves punishment, then he is not so far insane as to be exempt from responsibility. But, if he is under such delusion as not to understand the nature of the act, and has not reason and judgment to know that he is deserving of punishment, then he is not responsible. This is the test which

trated, there being no presumption of its existence from the antecedent fits from which he has recovered.[1]

the law prescribes, and which you are to apply in the present case.

It is asserted by the prisoner that when he struck the blow he was suffering under a disease known as *delirium tremens*. He has introduced evidence tending to prove his intemperate drinking of ardent spirits during several days before the time in question, and also certain effects of this intemperance. Physicians of great eminence, and particularly experienced in the observation of this disease, have been examined on both sides. They were not allowed to give their opinions upon the case; because the case, in point of fact, on which any one might give his opinion, might not be the case which you, upon the evidence, would find; and there would be no certain means of knowing whether it was so or not. It is not the province of an expert to draw inferences of fact from evidence, but simply to declare his opinion upon a known or hypothetical state of facts; and therefore the counsel on each side have put to the physicians such states of facts as they deem warranted by the evidence, and have taken their opinions thereon. If you consider that any of these states of fact put to the physicians are proved, then the opinions thereon are admissible evidence, otherwise they are not applicable to this case. And here I may remark, that although in general witnesses are held to state only facts, and are not allowed to give their opinions in a court of law, yet this rule does not exclude the opinions of those whose professions, and studies or occupations, have rendered them peculiarly skilful concerning particular questions. We take the opinion of physicians in this case for the same reason that we resort to them in our own cases out of court, because they are believed to be better able to form a correct opinion upon a subject within the scope of their studies than men in general. But these opinions, though proper for your consideration, are, nevertheless, not binding on you against your own judgment, but should be weighed, and, especially where they differ, compared by you, and such effect allowed to them as you think right. Besides these opinions, the physicians have also described to you the symptoms of the disease *delirium tremens*. They all agree that it is a disease of a very strongly marked character, and as little liable to be mistaken as any known in medicine. Dr. Bell says the symptoms are—

"1. Delirium, taking the form of apprehensiveness on the part of the patient. He is fearful of something; imagines demons and snakes around him. In attempting to escape, he will attack others as well as injure himself. But he is more apprehensive of receiving injury than desirous of inflicting it, except to escape. He is generally timid and irresolute, and easily pacified and controlled.

"2. Sleeplessness. I believe *delirium tremens* cannot exist without this.

"3. Tremulousness, especially of the hands, but showing itself in the limbs and the tongue.

"4. After a time sleep occurs, and reason thus returns; usually the sleep comes on in not less than three days, dating from the last sleep. At first it

[1] State *v.* Sewell, 3 Jones L. (N. C.) 250. As to general presumption arising from prior insanity, see § 246.

§ 206. To an indictment in Delaware, for larceny, the defence was that the prisoner was so drunk as to render him irresponsi-

is broken; then this is followed by a profound sleep, lasting six or eight hours, from which the patient awakes sane."

Dr. Steadman, after describing its symptoms substantially as Dr. Bell did, says its access may be very sudden, and he has often known it first to manifest itself by the patients attacking those about them, regarding them as enemies; that a case may terminate in two days, and rarely lasts more than four days.

Regarding these accounts of the symptoms of this disease, you will inquire whether the evidence proves that they existed in this case; and whether the previous habits and the intemperate use of ardent spirits, from which this disease springs, are shown; and whether the recovery of the prisoner corresponded with the course and termination of the disease of *delirium tremens* as described by the physicians.

It is not denied, on the part of the government, that the prisoner had drank intemperately of ardent spirits during some days before the occurrence. But it is insisted that he had continued to drink down to a short time before the homicide; and that when he struck the blow it was in a fit of drunken madness. And this renders it necessary to instruct you concerning the law upon the state of facts which the prosecutor asserts existed.

Although *delirium tremens* is the result of intemperance, and therefore in some sense is voluntarily brought on, yet it is distinguishable, and by the law is distinguished, from that madness which sometimes accompanies drunkenness.

If a person suffering under *delirium tremens* is so far insane as to render him irresponsible, the law does not punish him for any crime he may commit.

But, if a person commits a crime while intoxicated, under the immediate influence of liquor, the law does punish him, however mad he may have been. It is no excuse, but rather an aggravation of his offence, that he first deprived himself of reason before he did the act. There would be no security for life or property if men could commit crimes with impunity, provided they would first make themselves drunk enough to cease to be reasonable beings. And, therefore, it is a very important inquiry in this case whether this homicide was committed while the prisoner was suffering under that marked disease of *delirium tremens*, or in a fit of drunken madness. If the prisoner while sane made himself intoxicated, and while intoxicated committed a murder by reason of insanity which was one of the consequences of that intoxication, then he is responsible in point of law, and must be punished. This is as clearly the law of the land as the other rule, which exempts from punishment acts done under *delirium tremens*. It may sometimes be difficult to determine under which rule the accused comes. But it is the duty of the jury to ascertain from the evidence on which side this case falls, and to decide accordingly.

It may be material for you to know on which party is the burden of proof in this part of the case. It is incumbent on the prisoner to satisfy you that he was insane when he struck the blow, for the law presumes every man to be sane till the contrary is proved. But, if the contrary has been proved, the law does not presume that the in-

ble. Judge Wotten charged the jury that drunkenness was no excuse or palliation for a crime, but drunkenness long continued produces the disease of *mania-à-potu*, which deprives the party of reason, and incapacitates him from distinguishing between right and wrong. In this stage it becomes a kind of insanity. The jury would have to distinguish between the mere frenzy of drunkenness, and the fixed insanity produced by continued dissipation. If the prisoner was in the

Delirium distinct from frenzy of drink.

sanity of the prisoner arose from any particular cause; and it is incumbent on the party which asserts that it did arise from a particular cause, and that the prisoner is guilty by law because it arose from that cause, to make out this necessary element in the charge to the same extent as every other element in it. For the charge then assumes this form—that the prisoner committed a murder, for which, though insane, he is responsible, because his insanity was produced by and accompanied a state of intoxication. The government must satisfy you of these facts, which are necessary to the guilt of the prisoner in point of law. If you are convinced that the prisoner was insane to such an extent as to render him irresponsible, you will acquit him, unless you are also convinced that his insanity was produced by intoxication, and accompanied that state; in which case you will find him guilty.

The prisoner was acquitted.

A note in the *American Journal of Insanity* for July, 1856, says:—

"This distinction, between *delirium tremens* and temporary madness induced by intoxication, is laid down in The United States *v.* Drew, 5 Mason, 28; and (in England) in William Rennie's case, 1 Lewin, C. C. 76. In the latter case, Holroyd, J., said: 'Drunkenness is not insanity, nor does it answer to what is termed an unsound mind, *unless the derangement which it causes becomes fixed and continued by the drunkenness being habitual, and thereby rendering the party incapable of distinguishing between right and wrong.*' That mere drunkenness is no excuse for crime is very clearly settled by many decisions both in this country and in England. Cornwell *v.* The State, Mart. & Y. 147, 149; Bennet *v.* The State, ib. 133; The State *v.* Turner, 1 Wright's Ohio, 20; The State *v.* Thompson, ib. 617; Schaller *v.* The State, 14 Missouri, 502; The State *v.* John, 8 Ired. 330; Pirtle *v.* The State, 9 Humph. 663; Kelley *v.* The State, 3 Smedes & M. 518; The United States *v.* Clarke, 2 Cranch, C. C. R. 158. But, though drunkenness is not of *itself* a complete defence to crime, as insanity is, yet it may be admissible to the jury as evidence of the *intent*, in certain cases, with which the act was done. Thus, in Pigman *v.* The State, 14 Ohio, 555, it was held, on an indictment for passing counterfeit money knowing it to be counterfeit, that the drunkenness of the prisoner at the time of passing was proper for the consideration of the jury in determining whether he *knew* the bill to be counterfeit. See, also, The State *v.* McCants, 1 Spears, 384; Pennsylvania *v.* M'Fall, Addison, 255; Swan *v.* The State, 4 Humph. 136; Pirtle *v.* The State, 9 ib. 663; Haile *v.* The State, 11 ib. 154."

latter condition he could not be held responsible, otherwise he ought to be convicted.[1]

2. *Insanity immediately produced by intoxication does not destroy responsibility where the patient, when sane and responsible, made himself voluntarily intoxicated.*

§ 207. Drunkenness, so long as it does not prostrate the faculties, cannot be distinguished from any other kind of passion. If the man who is maddened by an unprovoked attack upon his person, his reputation, or his honor, be nevertheless criminally responsible—if hot blood form no defence to the fact of guilt—it would be a most extraordinary anomaly if drunkenness voluntarily assumed should have that effect, independently of all extraneous provocation whatever. If, as is pretended—or else there is no ground for the exception—drunkenness so incapacitates the reason as to make it at least partially incapable of distinguishing between right and wrong, or else so inflames the passions as to make restraint insupportable, then comes in the familiar principle that the man who voluntarily assumes an attitude or does an act which is likely to produce death in others, is responsible for the consequences, even though he had at the time no specific intentions to take the life of any one. Thus, if a man breaking an unruly horse wilfully ride him among a crowd of persons, the probable danger being great and apparent, or if a workman out of sport or mischief slide a plank from the top of a roof into a crowded street, or if a manufacturer deliberately and knowingly leave in the cellar of an uninhabited house a keg of powder, and death ensue, it is murder at common law.[2] And so it must also be held that the steamboat captain who deliberately dashes his boat into a crowd of smaller craft, so that life is taken, is in like manner responsible. There can be no question as to this. The man who voluntarily arms himself with weapons of destruction, and then throws them hap-hazard among the innocent or unoffending, without even the excuse of specific malice or provocation, is at least as dangerous as the assassin who picks out his victim in advance. Against the last there may be some checks; against the first, none.

Mere drunkenness does not avoid responsibility.

[1] State *v.* McGonigal, 5 Harr. 510.

[2] See Wh. Cr. L. 8th ed. §§ 343 *et seq.*

Caution may ward off the one, or innocence escape it; but to the other the most innocent and *kindliest* would be as likely to fall victims as the most malevolent.

§ 208. The safety of the community, in fact, requires that this rule should be observed. Every murderer would drink to shelter his intended guilt. There never could be a conviction for homicide if drunkenness avoid responsibility.[1] As it is, some of the most premeditated homicides are committed under the stimulus of liquor. The guilty purpose is at first sedately conceived, but there are few men whose temperaments are so firmly knit as to enable them to enter a scene of blood without first fortifying themselves for the task to be performed. The head dreads the heart's cowardice, and seeks to insure against it by drink. And, if the assassin does not take liquor to strengthen his nerves, he will take it to avoid conviction. There would be no species of *deliberate* homicide, under such a dispensation, that would not avoid punishment. It would be the undeliberate only that would be made responsible.

This view necessary to public safety.

§ 209. The tenor of authority to this effect is clear. Even the German text writers, some of whom attenuate to so thin a texture the doctrine of moral responsibility, do not undertake to treat drunkenness as a defence. Sir E. Coke does not go beyond the tenor of Roman as well as of English writers when he says, "As for a drunkard who is *voluntarius dæmon*, he hath, as has been said, no privilege thereby, but, what hurt or ill soever he doth, his drunkenness doth aggravate it. *Omne crimen ebrietas et incendit et detegit.*"[2] And, although drunkenness cannot now be said to aggravate a crime in a judicial sense, yet it is well settled that it forms no defence to the fact of guilt. Thus Judge Story, in a case already cited, after noticing that insanity, as a general rule, produces irresponsibility, went on to say: "An exception is, when the crime is committed by a party while in a fit of intoxication, the law allowing not a man to avail himself of the excuse of his own gross vice and misconduct, to shelter himself from the legal consequences of such crime." Lord Hale says: "The third sort of madness is that which is *dementia affectata*, namely drunkenness. This vice doth deprive a man of

Sustained by all authority.

[1] See *supra*, § 92.

[2] Co. Litt. 247, *a*.

his reason, and puts many men into a perfect or temporary frenzy; but by the laws of England, such a person shall have no privileges by his voluntarily contracted madness, but shall have the same judgment as if he were in his right senses."[1] And so Parke, B., a very authoritative English crown judge, said to a jury in 1837: "I must also tell you that, if a man makes himself voluntarily drunk, it is no excuse for any crime he may commit whilst he is so; he takes the consequences of his own voluntary act, or most crimes would go unpunished."[2] And Alderson, B., said in 1836: "If a man chooses to get drunk, it is his own voluntary act; it is very different from madness which is not caused by any act of the person. That voluntary species of madness which it is in a party's power to abstain from, he must answer for."[3] In harmony with this is the whole current of English authority.[4]

Drunkenness admissible to disprove specific intent.

§ 210. The law in this country is that voluntary drunkenness, not amounting to permanent insanity, is no defence to the *factum* of guilt; the only point about which there has been any doubt being the extent to which evidence of drunkenness is receivable to determine the exactness of the intent or the extent of deliberation. And on this point the prevalent opinion is that evidence of drunkenness at the time of the offence is admissible to disprove specific intent or deliberation.[5]

[1] 1 Hale, 7; 4 Black. Com. 26; Wharton's C. L. (*in loco*); 1 Gabbett, C. L. 9.

[2] R. *v.* Thomas, 7 C. & P. 817.

[3] R. *v.* Meakin, 7 C. & P. 297.

[4] Burrow's case, 1 Lewin C. C. 75; Rennie's case, 1 Lewin C. C. 76; 1 Russel on Cr. 8; Wh. Cr. L. 8th ed. § 50. In a very recent English case it was held that though drunkenness is no excuse, delirium caused by drinking and differing from drunkenness, if it produces such a degree of madness, even for a time, as to render a person incapable of distinguishing right from wrong, relieves him from criminal responsibility. R. *v.* Davis, 14 Cox C. C. 563. See a note to this case as reported in 28 Moak's English Reports, 657, for a full statement and classification of all the American cases.

[5] In Rogers's case, which came up in 1858, before the New York court of appeals, the law was thus stated by Denio, J.: "Where a principle of law is found to be well established by a series of authentic precedents, and especially where, as in this case, there is no conflict of authority, it is unnecessary for the judges to vindicate its wisdom or policy. It will, moreover, occur to every mind that the principle mentioned is absolutely essential to the protection of life and property. In the forum of conscience there is no doubt considerable difference between murder deliberately planned and executed by a person of unclouded intel-

§ 211. A humane qualification of the old law was in 1870 recognized by the supreme court of Michigan, in an opinion of much

lect, and the reckless taking of life by one infuriated by intoxication: but human laws are based upon considerations of policy, and look rather to the maintenance of personal security and social order, than to accurate discrimination as to the moral qualities of individual conduct. But there is in truth no injustice in holding a person responsible for his acts committed in a state of voluntary intoxication. It is a duty which every one owes to his fellow-men, to say nothing of more solemn obligations, to preserve, so far as it is in his power, the inestimable gift of reason. If it be perverted or destroyed by fixed disease, though brought on by his own vices, the law holds him not accountable. But, if by a voluntary act he temporarily casts off the restraints of reason and conscience, no wrong is done him if he is considered answerable for any injury which in that state he may do to others, or to society.

"Before proceeding to examine the judge's charge, it is necessary to state one other principle connected with the subject of intoxication. I am of opinion that, in cases of homicide, the fact that the accused was under the influence of intoxication may be given in evidence in his behalf. The effect which the evidence ought to have upon the verdict will depend upon the other circumstances of the case. Thus, in Rex *v.* Carroll, which was a case of murder by stabbing, there was not, as the court considered, any provocation on the part of the deceased, and it was held that the circumstance that the prisoner was intoxicated was not at all material to be considered. Rex *v.* Meakin was an indictment for stabbing with a fork with intent to murder; and it was shown that the prisoner was the worse for liquor. Alderson, Baron, instructed the jury that, with regard to the intention, drunkenness might be adverted to according to the nature of the instrument used. 'If,' he said, 'he uses a stick, you could not infer a malicious intent so strongly against him if drunk, if he made an intemperate use of it, as you would if he had used a different kind of a weapon; but, where a dangerous instrument is used, which, if used, must produce a grievous bodily harm, drunkenness can have no effect upon the consideration of the malicious intent of the party.' In Rex *v.* Thomas, for malicious stabbing, the person stabbed had struck the prisoner twice with his fist, when the latter, being drunk, stabbed him, and the jury were charged that drunkenness might be taken into consideration where what the law deems sufficient provocation has been given, because the question in such cases is, whether the fatal act is to be attributed to the passion of anger excited by the previous provocation; and that passion, it was said, is more easily excitable in a person when in a state of intoxication than when he is sober; so, it was added, where the question is, whether words have been uttered with a deliberate purpose, or are merely low and idle expressions, the drunkenness of the person uttering them is proper to be considered. But, if there is really a previous determination to resent a slight affront in a barbarous manner, the state of drunkenness in which the prisoner was ought not to be regarded, for it would furnish no excuse.

"It most generally happens, in homicides committed by drunken men, that

force. If a person (so it has been there held) is subject to a hereditary or other type of insanity liable to be excited by slight amounts

the condition of the prisoner would explain or give character to some of his language, or some part of his conduct, and, therefore, I am of opinion that it would never be correct to exclude the proof altogether. That it would sometimes be right to advise the jury that it ought to have no influence upon the case, is, I think, clear from the foregoing authorities. In a case of lengthened premeditation, of lying in wait, or where the death was by poisoning, or in the case of wanton killing without any provocation, such an instruction would plainly be proper.

"Assuming the foregoing positions to be established, I proceed to examine the exception to the charge of the judge. It is difficult to know precisely what was meant by the request to charge; but I think its sense may be expressed thus: that drunkenness might exist to such a degree, that neither an intention to commit murder, nor a motive for such an act, could be imputed to the prisoner. It was therefore asked that it should be left to the jury to determine whether such a degree of intoxication had been shown; and that they should be instructed that if it had, the prisoner should be found guilty of manslaughter only. We must lay out of view as inapplicable, the case of a person who had become insensible from intoxication, and who was performing an act unaccompanied by volition. There was nothing in the evidence to show that the prisoner's conduct was not entirely under the control of his will, or which would render it possible for the jury to find that he did not intend to stab the deceased with his knife. The mind and will were no doubt more or less perverted by intoxication, but there was no evidence tending to show that they were annihilated or suspended. Assuming, therefore, that the request did not refer to such a hypothesis, the only other possible meaning is that it supposes the jury legally might find that the prisoner was so much intoxicated that he could not be guilty of murder for the want of the requisite intention and motive, and the request was that they might be so instructed. This would be precisely the same thing as advising them that they might acquit of murder on account of the prisoner's intoxication, if they thought it sufficient in degree. It has been shown that this would be opposed to a well-established principle of law. The judge was not at liberty so to charge, and the exception to his refusal cannot be sustained. What he did charge on the subject of intoxication was more favorable to the prisoner than he had a right to claim. It implies that if he was so far intoxicated as to be deprived of his reasoning faculties, it was an excuse for the crime of murder, or, as perhaps it was intended to state, that he could not be guilty of murder. The rule which I have endeavored to explain assumes that one may be convicted of murder, or of other crime, though his mind be reduced by drunkenness to a condition which would have called for an acquittal if the obliquity of mind had arisen from any other cause. The judge ought to have charged, that, if a man makes himself voluntarily drunk, that is no excuse for any crime he may commit while he is so, and that he must take the consequence of his own voluntary act. (Rex *v.* Thomas, *supra.*) The charge, therefore, gave the prisoner the chance of an acquittal to which he was not

of alcoholic drinks—if, in consequence of indulging in such drinks, his mental faculties become excited to diseased action to such extent that he loses self-control, if he was ignorant of this effect when so indulging—then he will be regarded as rather insane than intoxicated, and subject to the immunities of insanity.[1] This is undoubtedly in accordance with those analogies which gauge insane delusions by the intellectual abilities of patient and not of critic, and which declare that we are to measure a man's fears and passions by his character and temperament, and not by our own.[2] Dr. Krafft-Ebing, in an essay published in 1871, has vindicated this position psychologically with great power as well as delicacy of discrimination. He establishes by copious proof the fact that there are some temperaments which slight quantities of spirituous liquor make insane, and he argues that such persons, if drinking ignorantly, or entrapped into drink, should be covered, *pro tanto*, with the immunities of insanity.

But, to constitute such mitigation of guilt, drunkenness must be involuntary in the sense above stated. A contrary doctrine was indeed intimated by Judge Robertson, of Kentucky, in an eccentric opinion already adverted to;[3] but to view voluntary and intentional drunkenness as an excuse is without authority either legal or psychological.[4]

§ 212. The connection between drunkenness and insanity is thus stated by Griesinger: "That intoxication, when carried to a certain degree, as a dreamy condition with numerous hallucinations and illusions, really resembles insanity, is easily understood. Sometimes we see individuals who, after partaking of a relatively small quantity of spirits, and without being in a state of deep intoxication, but retaining fully their consciousness, present a great ten-

entitled; but this was not an error of which he could take advantage." People *v.* Rogers, 18 N. Y. 9. See also Friery *v.* People, 54 Barb. 319; 2 Keyes, 424.

In Smith *v.* Com., 1 Duvall, 224, Judge Robertson startled the community, by stating that drunkenness may be an excuse for crime as a "transient insanity." This, however, is repudiated in Shannahan *v.* Com., 8 Bush, 463. When drunkenness is voluntary, this position is without warrant. For review see 23 Am. Journ. of Insan. 1.

[1] Roberts *v.* People, 19 Mich. 401.

[2] See §§ 34-60, 200. See essay by Dr. George Cook, 18 Am. Journ. of Ins. 321. See also 19 ibid. 448.

[3] Smith *v.* Com., 1 Duv. 224.

[4] See an able review in 23 Am. Journ. of Ins. 1; and see *supra*, § 200.

dency to commit very extravagant, noisy, and foolish acts; a circumstance which may be truly considered as a symptom of predisposition to mental disease.

"Moreover, there occur in drunkards sudden convulsive states which resemble epileptic attacks, and which are sometimes followed by a condition of forgetfulness and tranquil delirium, at other times by outbreaks of furious delirium, which has been termed the convulsive form of intoxication.

"The habitual drunkard, in whom the habit is already far advanced, presents also, even when he is not in a state of intoxication, many signs which indicate the existence of an advancing chronic disease of the brain, and which make him closely resemble the mentally diseased. Indeed this condition may gradually pass into insanity, and particularly into dementia; and there are constantly found in the brains of habitual drunkards, as in many of the insane, the results of passive congestion—chronic opacities and thickenings of the cerebral membranes. The appetite acquired by habit is so powerful in the drunkard, the ideas which might oppose it are so weak, and the will has become so paralyzed, that he, even though he is aware that he renders himself despised and contemptible, undermines his constitution, disturbs his domestic happiness, ruins his business, and every day postpones the good resolution which he perhaps has made.

"The craving, the dizziness, the dulness of the senses, the muscular feebleness, the stomach complaints from which he suffers, are, each time he partakes, alleviated for the moment, and it may, perhaps, be partly owing to the fact that these disorders require each day to be remedied that drunkenness is often so inveterate."

§ 213. "Of all the various forms of chronic insanity, drunkenness especially appears to possess much in common with general paralysis. Besides, incompletely developed forms, which in a medico-legal point of view are often very difficult to judge of, are very common.

"These slight chronic mental anomalies observed in the drunkard are manifested by very apparent mental dulness, loss of the sense of duty, and in general of all the higher sentiments: conscience and the sense of truth are blunted, the intellect is generally enfeebled, especially the memory, frequently slight or well-marked hallucinations also exist. Numerous other anomalies of the nervous

system also present themselves; tremors of the hands and of the tongue, deadening of the sense of sight and of touch, debility of the genital organs; the patient has formications and cramps in his limbs, giddiness, sometimes epileptic attacks of greater or less severity; sooner or later marasmus and dropsy may set in, with the usual local affections (gastric disease, emphysema, cirrhosis of the liver, Bright's disease, etc.). The children of drunkards very frequently die early from convulsions; many of them are idiots, imbeciles, or microcephalic; or in later life they present the same disposition to drunkenness, insanity, and crime."[1]

3. *While intoxication per se is no defence to the fact of guilt, yet, when the question of intent or premeditation is concerned, it may be proved for the purpose of determining the precise degree.*

§ 214. This position should be very jealously guarded, since, as has already been remarked, there are few cases of premeditated violent homicide, in which the defendant does not previously nerve himself for the encounter by liquor, and there would in future be none at all, if the fact of being in liquor at the time is enough to disprove the existence of premeditation. The true view, therefore, would seem to be, not that the fact of liquor having been taken is of any value at all on the question of intent or premeditation, but that when there is no evidence of premeditation *aliunde*, and where the defendant is proved at the time of the occurrence to be in a state of mental confusion of which drink was the cause, the fact of such mental confusion may be received to show either that there was no specific intent to take life, or that there was no positive premeditation.[2] In the cases arising out of the statutes resolving murder into two degrees, in which the distinguishing test is a specific intent to take life, this position receives several pregnant illustrations. Thus, in the Philadelphia riot cases of 1844, where it was shown that bodies of men were inflamed by sectarian and local prejudices, and blinded by a wild apprehension of danger to such an extent as to make them incapable of discrimination, or of precise or specific purpose, it was held that they could not be considered as

Degree may be determined by fact of drunkenness.

[1] Griesinger's Mental Path., Syden. ed. (1867) § 100.

[2] See cases detailed in Wh. Cr. L. 8th ed. § 51.

guilty of that species of "wilful and deliberate" murder which constitutes murder in the first degree.[1] Precisely analogous to this is the case of the drunkard, who in a fight slays an antagonist without any sober reflection. In his intoxication he is incapable of such mental action as the term "premeditate" describes. His mental condition may be such as to deprive him of the capacity to form a "specific intent" either to take life, or to do anything else. And yet at the same time, at common law, the offence would, strictly speaking, fall under the head of murder, for it would possess the incident of malice, and would be without due provocation. Under such circumstances the offence properly is to be ranked as murder in the second degree, and so has it repeatedly been decided by the courts.[2]

[1] Wharton on Homicide, 371, 2.

[2] Wh. Cr. L. 8th ed. §§ 52, 381 *et seq.*, and cases there cited. Com. *v.* Jones, 1 Leigh, 612; Boswell *v.* Com., 20 Gratt. 860; Com. *v.* Hart, 2 Brewst. 546; Com. *v.* Haggerty, Lewis, Cr. L. 402; Pirtle *v.* State, 9 Humph. 663; Swan *v.* State, 4 Humph. 131; Penna. *v.* M'Fall, Add. 257; People *v.* Hammell, 2 Parker, C. C. (N. Y.) 223; People *v.* Robinson, ibid. 235. In a case in Tennessee, the court thus speak: "Upon the trial, there was evidence that the prisoner was intoxicated at the time he committed the homicide. Upon the subject of the defendant's intoxication he told the jury that 'voluntary intoxication is no excuse for the commission of crime; on the contrary it is considered by our law as rather an aggravation; yet, if the defendant was so deeply intoxicated by spirituous liquors at the time of the killing as to be incapable of forming in his mind a design deliberately and premeditately to do the act, the killing under such a state of intoxication would only be murder in the second degree.' It is insisted that his honor did not state the principle upon this subject, as it has been ruled by this court. In the case of Swan *v.* The State, Judge Reese, who delivered the opinion of the court, says: 'But, although druukenness in point of law constitutes no excuse or justification for crime, still, when the nature and essence of a crime are made to depend by law upon the peculiar state and condition of the criminal's mind at the time, and with reference to the act done, drunkenness, as a matter of fact, affecting such state and condition of the mind, is a proper subject for consideration and inquiry by the jury. The question in such case is, what is the mental status? Is it one of self-possession, favorable to a fixed purpose, by deliberation and premeditation; or did the act spring from existing passion, excited by inadequate provocation, acting, it may be, on a peculiar temperament, or upon one already excited by ardent spirits? In such a case it matters not that the provocation was inadequate, or the spirits voluntarily drank; the question is, did the act proceed from sudden passion, or from deliberation or premeditation? What was the mental status at the time of the act, and with reference to the act? To regard the fact of intoxication as meriting con-

§ 215. The same general view is taken as to the question of *intent* in other cases. Thus it is now the settled rule in England

sideration in such a case, it is not to hold that drunkenness will excuse crime, but to inquire whether the very crime which the law defines and punishes has been in point of fact committed. In these remarks the court intend to be understood as distinctly indicating, that a degree of drunkenness by which the party was greatly excited, and which produced a state of mind unfavorable to deliberation and premeditation, although not so excessive as to render the party absolutely incapable of forming a deliberate purpose, might be taken into consideration by a jury, in determining whether the killing was done with premeditation and deliberation.' The whole subject was ably reviewed by Judge Turley, in the case of Pirtle *v.* The State. In delivering the opinion of the court in that case, the judge says, at page 671: 'It will frequently happen necessarily, when the killing is of such a character as the common law designates as murder, and it has not been perpetrated by means of poison, or by lying in wait, that it will be a vexed question, whether the killing has been the result of sudden passion produced by a cause inadequate to mitigate it to manslaughter, but still sufficient to mitigate it to murder in the second degree, if it be really the true cause of the excitement, or whether it has been the result of premeditation and deliberation; and in all such cases, whatever view is able to cast light upon the mental status of the offenders is legitimate proof; and among others, the fact that he was at the time drunk; not that this will excuse and mitigate the offence, if it were done wilfully, deliberately, maliciously, and premeditately (which it might well be, though the perpetrator was drunk at the time); but to show that the killing did not spring from a premeditated purpose, but sudden passion, excited by inadequate provocation, such as might reasonably be expected to arouse sudden passion and heat, to the point of taking life, without premeditation and deliberation.' Here the court explicitly lays down the rule to be, that in all cases where the question is between murder in the first and murder in the second degree, the fact of drunkenness may be proved, to shed light upon the mental status of the offender, and thereby to enable the jury to determine whether the killing sprung from premeditated purpose, or from passion excited by inadequate provocation. And the degree of drunkenness which may then shed light upon the mental state of the offender, is not alone that excessive state of intoxication, which deprives a party of the capacity to frame in his mind a design deliberately and premeditately to do an act; for the court says that, in the state of drunkenness referred to, a party well may be guilty of killing wilfully, deliberately, maliciously, and premeditately; and, if he so kill, he is guilty as though he were sober. The principle laid down by the court is, that, when the question is, can drunkenness be taken into consideration in determining whether the party be guilty of murder in the second degree, the answer must be, that it cannot; but, when the question is, what was the actual mental state of the perpetrator, at the time the act was done, was it one of deliberation and perpetration, then it is competent to show any degree of intoxication that may exist, in order that the jury may judge, in view of such intoxication,

Same view taken in England as regards *intent.*

that, though drunkenness is no excuse for crime, it may be taken into account by the jury when considering the motive or intent of a person acting under its influence.[1] So, also, in an Ohio case, it was very properly held that, when the charge was knowingly passing counterfeit money with intent to cheat, the drunkenness of the defendant at the time of the

in connection with all the other facts and circumstances, whether the act was premeditately and deliberately done.. The law often implies malice from the manner in which the killing was done, or the weapon with which the blow was stricken. In such case it is murder, though the perpetrator were drunk. And no degree of drunkenness will excuse in such case, unless by means of drunkenness an habitual or fixed madness be caused. The law in such cases does not seek to ascertain the actual state of the perpetrator's mind, for, the fact from which it is implied having been proved, the law presumes its existence, and proof in opposition to this presumption is irrelevant and inadmissible. Hence a party cannot show he was so drunk as not to be capable of entertaining a malicious feeling. The conclusion of law is against him. But, when the question is, whether a party is guilty of murder in the first degree, it becomes indispensable that the jury should form an opinion as to the actual state of mind with which this act was done. All murder in the first degree (except that committed by poison, and by lying in wait) must be perpetrated wilfully, deliberately, maliciously, and premeditately. The jury must ascertain, as a matter of fact, that the accused was in this state of mind when the act was done. Now, according to the cases of Swan *v.* The State, and Pirtle *v.* The State, any fact that will shed light upon this subject may be looked to by them, and may constitute legitimate proof for their consideration. And among other facts, any state of drunkenness being proved, it is a legitimate subject of inquiry, as to what influence such intoxication might have had upon the mind of the offender, in the perpetration of the deed. We know that an intoxicated man will often, upon a slight provocation, have his passions excited and rashly perpetrate a criminal act. Now, it is unphilosophical for us to assume that such a man would, in the given case, be chargeable with the same degree of premeditation and deliberation that we would ascribe to a sober man, perpetrating the same act upon a like provocation. It is in this view of the question, that this court held, in Swan's case and in Pirtle's case, that the drunkenness of a party might be looked to by the jury, with the other facts in the case, to enable them to decide whether the killing was done deliberately and premeditately. But his honor, the circuit judge, told the jury, that drunkenness was an aggravation of the offence, unless the defendant was so deeply intoxicated as to be incapable of forming in his mind a design deliberately and premeditately to do the act. In this charge there is error, for which the judgment must be reversed. Reverse the judgment, and remand the cause for another trial." Haile *v.* State, 11 Humph. 154.

[1] R. *v.* Gamlen, 1 F. & F. 90; R. *v.* Monkhouse, 4 Cox C. C. 55; R. *v.* Stopford, 11 Cox C. C. 643.

offence was a fit subject for the consideration of the jury, there being no ground to suppose that the defendant knew the money to be counterfeit *before* he was drunk.[1] And when in England the defendant was indicted for an attempt to commit suicide by drowning, and it was alleged that she was at the time unconscious of the nature of her act from drunkenness, Jervis, C. J., said to the jury: "If the prisoner was so drunk as not to know what she was about, how can you find that she *intended* to destroy herself?"[2]

Unsettled opinion where provocation existed.

§ 216. Beyond this the advance has been fluctuating. The furthest step taken was in an English case, decided in 1819,[3] where Holroyd, J., is reported by Sir W. Russell, who adopts his opinion as text law, to have said that the fact of drunkenness might be taken into consideration to determine the question whether an act was premeditated or done only with sudden heat and impulse. This would make drunkenness an item in every question of provocation or hot blood, and would of course open the way to the same difficulties as to general policy, which we have already pointed out in another connection. In 1835, however, this case was expressly repudiated by Parks, J., who said, in referring to Holroyd, J.'s, language, as just given, "Highly as I respect that late excellent judge, I differ from him, and my brother Littledale agrees with me. He once acted upon that case, but afterwards retracted his opinion. There is no doubt that that case is not law. I think there would be no safety in human life if it were to be considered as law."[4] But the very next year, Alderson, B., in a case of stabbing, retraced at least a part of the retreat which had been thus so emphatically sounded. "It is my duty to tell you," he said, "that the prisoner being intoxicated does not alter the nature of the offence. If a man chooses to get drunk, it is his own voluntary act; it is very different from a madness which is not caused by any act of the person. That voluntary species of madness which it is in a party's power to abstain from, he must answer for. *However, with regard to the intention, drunkenness may perhaps be adverted to according to the*

[1] Pigman *v.* State, 14 Ohio, 555; affirmed, but limited, in Nichols *v.* State, 8 Ohio St. 435. See also U. S. *v.* Roudenbush, 1 Bald. 514.

[2] R. *v.* Moore, reported 6 Law Rep. (N. S.) 581, 3 C. & K. 319.

[3] R. *v.* Grindley, 1 Russ. on Cr. 9th ed. 12, note 2.

[4] R. *v.* Carrol, 7 C. & P. 145.

nature of the instrument used. If a man uses a stick, you would not infer a malicious intent so strongly against him, if drunk, when he made an intemperate use of it, as you would if he had used a different kind of weapon; but, where a dangerous instrument is used, which, if used, must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party."[1] Perhaps this is doing no more than reiterating the principle we have already announced, that, when there is evidence of *sober* premeditation, intermediate drunkenness cannot be received to affect the question of intent; but that, when there is no such evidence, it can. And it would not be right to strain further than this the following charge, in 1837, by Parke, B. (to be distinguished from Park, J., whose opinion, two years before, has been just noticed): "I must tell you that, if a man makes himself voluntarily drunk, that is no excuse for any crime he may commit while he is so; he must take the consequence of his own voluntary act; or most crimes would otherwise be unpunished. But drunkenness may be taken into consideration in cases where what the law deems sufficient provocation has been given; because the question is, in such cases, whether the fatal act is to be attributed to the passion of anger, excited by the previous provocation, and that passion is more easily excitable in a person when in a state of intoxication, than when he is sober. So, where the question is whether words have been uttered with a deliberate purpose, or are merely low and idle expressions, the drunkenness of the person uttering them is proper to be considered. But, if there is really a previous determination to resent a slight affront in a barbarous manner, the state of drunkenness in which the prisoner was ought not to be regarded, for it would furnish no excuse. You will decide whether the subsequent act does not furnish the best means of judging what the nature of the previous expression really was."[2]

§ 217. The American cases present the same general result, depending in principle, if not in terms, on the position that, where, in prosecutions for violence, the encounter was sudden, and the defendant, prior to such encounter, had no malice or old grudge, intoxication at the time of the encounter can be taken into consideration, to ascertain

Drunkenness relevant on issue of malice.

[1] R. *v.* Meakin, 7 C. & P. 297.

[2] R. *v.* Thomas, 7 C. & P. 817.

whether the defendant, when under a legal provocation, acted from malice or from sudden passion,[1] and whether the act done was specifically intended. But if malice or specific intent to do the criminal act is proved *aliunde*, then intoxication at the time does not lower the grade of offence.[2] The same distinction is applicable, *mutatis mutandis*, to prosecutions for other offences.

[§§ 218–228 are omitted in this edition for the purpose of condensation.]

[1] See Schaller *v.* State, 14 Mo. 502.

[2] See cases in Wh. Cr. L. 8th ed. § 54 *et seq.*

CHAPTER VI.

INSANITY AS RELATED TO LIFE INSURANCE.

Question one of construction of policy, § 229.
In England, "by his own hand or act" covers all intentional suicide, § 230.
This view repudiated by supreme court of U. S., § 231.
Test in New York, § 232.
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"In the known violation of the law of any state" does not extend to insanity, § 238.
"Sane or insane" is a good condition, § 239.
Right and wrong test not applicable, § 240.
Suicide not conclusive evidence of insanity, § 241.

Question one of construction of policy.

§ 229. The clauses in the insurance policies which provide that the policies shall be void if the insured party kills himself, are usually worded in one of two ways. Either the phrase "shall die by his own hand or act" is used, or the shorter phrase, "shall die by suicide."[1] We shall now consider the constructions which have been put upon these phrases by the various courts to whose judgment they have been submitted.

In England "by his own hand or act" covers all intentional suicide.

§ 230. The first of these phrases was considered by the English court of common pleas in 1842.[2] In 1838, the insured, being, it was claimed at the time, of unsound mind, cast himself from Vauxhall bridge into the Thames, and was drowned. In an action on the policy, the jury found that the insured "voluntarily threw himself into the river, knowing at the time that he should thereby destroy his life, and intending thereby to do so, but that at the time of com-

[1] For other forms see Bliss on Life Ins. 2d ed. § 228.

[2] Borradaile *v.* Hunter, 5 Scott, N. R. 418; 5 M. & G. 639; 2 Big. Life Ins. R. 280.

mitting the act he was not capable of judging between right and wrong." It was held by Maule, Erskine, and Coltman, JJ., that on this verdict judgment should be entered for the defendant. Two of the judges laid much stress on the fact that the words "die by his own hands," and not "suicide," were used in the exception. "When I find," says Erskine, J., "the terms 'shall commit suicide,' that have been popularly understood and judicially considered as importing an act of criminal self-destruction, exchanged for words not hitherto so construed, it may, I think, be fairly inferred that the terms adopted were intended to embrace all cases of intentional self-destruction, unless it can be collected from the immediate context that the parties used them in a more limited sense."

§ 231. But the supreme court of the United States has not assented to this construction. In a case brought before it in 1872,[1] the case of Borradaile *v.* Hunter was relied on as authoritative, and the words of the policy having been "die by his own hand," the fact that the deceased took poison was argued to be conclusive in favor of the insurance company. But Mr. Justice Hunt, in delivering the opinion of the court (Strong, J., *dissentiente*), said: "We hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life; there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning powers are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable." "Nor," said he, "do we see any difference, for this purpose, in the meaning of the expressions commit suicide, take his own life, or, die by his own hand." This opinion was approved in the case of Insurance Co. *v.* Rodel;[2] and it was held in the latter case that evidence tending to show that the insured was

This view repudiated by supreme court of U. S.

[1] Life Ins. Co. *v.* Terry, 15 Wall. 580. [2] 95 U. S. 232.

insane at the time of committing the act which caused his death should not be taken from the jury, as it is for them to pass upon its weight.

Test in New York.

§ 232. The court of errors of New York, in 1853, affirming a decision of the supreme court,[1] on a policy whose exception was in the words "by his own hands," rejected, by a vote of five to three, the construction of the English courts, and held that "dying by his own hands" meant felonious and criminal suicide, and that where the self-killing was insane the policy was not avoided. This is substantially followed by the subsequent cases in that state, but the "right and wrong" test was distinctly repudiated in the next case that arose;[2] it being also maintained that the former case of Breasted *v.* The Farmer's L. & T. Co. was distinguishable from the case of Life Ins. Co. *v.* Terry, as in the latter case the question of the capacity of the deceased to appreciate the moral character of the act was not involved; and that Breasted's case was furthermore distinguishable from Borradaile *v.* Hunter, as in that case the judge assumed that the act was voluntary, which fact was not proved in Breasted's case. The conclusion was that to take a case out of the proviso, on the ground of insanity, the assured must have been so mentally disordered as not to understand that the act he committed would cause his death, or he must have committed it under the influence of some insane impulse which he could not resist; it would not be sufficient that his mind was so impaired that he was not conscious of the moral obliquity of his act. The later cases follow this conclusion.[3]

Rule in Massachusetts and Maine.

§ 233. In Massachusetts, in 1862, it was ruled that where the policy was conditioned to be void in case the assured died by his own hand, it was avoided by self-destruction knowingly caused in a fit of insanity.[4] Similar facts appeared in a later case,[5] in which the doctrine that inten-

[1] Breasted *v.* The Loan Co., 8 N. Y. 299.

[2] Van Zandt *v.* Ins. Co., 55 N. Y. 169; 4 Big. Life Ins. Rep. 313.

[3] McClure *v.* Ins. Co. 55 N. Y. 651; Weed *v.* Ins. Co., 70 N. Y. 561; Newton *v.* Ins. Co., 76 N. Y. 426. It is for the judge, consequently, to weigh the evidence of insanity and to decide whether it is sufficient to go to the jury and warrant a verdict. Fowler *v.* Ins. Co., 4 Lans. 202.

[4] Dean *v.* Ins. Co., 4 Allen, 96.

[5] Cooper *v.* Ins. Co., 102 Mass. 227 (1869); 3 Big. Life Ins. Rep. 656.

tional self-killing, though the party was at the time insane, avoided a policy, was reaffirmed; Chapman, C. J., saying that in this case "there was no offer to prove the madness of delirium, or that the act of self-destruction was not the result of the will and intention of the party," etc. The proviso in that policy used the words "die by suicide," and the court held that there was no difference between the various forms in this respect, the object of all being to guard against intentional suicide. The supreme court of Maine, also, appears to approve of the doctrine that suicide will avoid a policy unless it is unintentional or caused by delirium. For, in the only case in which the subject has been treated by that court,[1] though it was held that the plaintiff in an action on a policy of insurance could recover by showing that the party insured committed suicide unintentionally in a fit of insanity, care was taken to say that there was no intention of departing in this respect from the position taken by the supreme court of Massachusetts.

Rule in other states.

§ 234. A charge which almost repeated the words of the New York court in Van Zandt's case has been approved by the supreme court of Minnesota;[2] and in like manner the court of appeals in Maryland[3] affirmed a charge which gave to the insured only the benefit of the proviso recognized by the New York and Massachusetts cases; and it seems to be generally thought that the great weight of authority in this country sustains the ruling of these cases, that there can only be a recovery if the deceased killed himself in a fit of insanity which overpowered his reason, consciousness, and will. But the opinion of the supreme court of the United States in Life Ins. Co. *v.* Terry, which was said by the New York court of appeals to be *obiter* on the question whether a consciousness that the act was wrong took the insured out of the exception,[4] has been approved, and on that very point, by a later decision of the supreme court, as was before noticed.[5] And it has been expressly followed in Pennsylvania,[6]

[1] Eastabrook *v.* Ins. Co., 54 Me. 224.

[2] Scheffer *v.* Ins. Co., 25 Minn. 534.

[3] Ins. Co. *v.* Peters, 42 Md. 414.

[4] Van Zandt's case, *ubi supra*.

[5] *Supra*, § 231. For circuit court cases deprived of their authority by the decision in Lif Ins. Co. *v.* Terry, see Gay *v.* Ins. Co., 9 Blatch. 142 Nimick *v.* Ins. Co., 3 Brewst. 502; Coverston *v.* Ins. Co., 4 Big. L. Ins. Rep. 169; following Life Ins. Co. *v.* Terry, is Moore *v.* Ins. Co., 3 Ins. L. J. 444.

[6] Ins. Co. *v.* Groom, 86 Penn. St. 92. In this case, it is true, the policy was

Georgia,[1] and Louisiana,[2] which makes a conflict of authority not to be overlooked. It is to be noticed that some cases rest on the ground that insanity is a disease, and that as policies of life insurance are especially designed to protect and provide against disease, such policies cover the case of suicide by insanity.[3] And in one case an examination of the authorities was declined as unprofitable, and the decision was made solely upon the ground of disease.[4]

Distinctive ruling in Kentucky.

§ 235. In 1869, the words, "if he shall die by his own hands this policy shall be void," came up for construction before the supreme court of Kentucky, in a case where it was averred "that the fatal shot was the involuntary offspring of a momentary paroxysm of *moral* insanity which subjected his will and impelled the homicide beyond the power of self-control or successful resistance." The court was equally divided on the question whether this state of facts avoided the policy, though the judges seem to have concurred in the opinion that there would be no avoidance where the suicide was in "the madness of delirium." The case, however, is chiefly remarkable for the bold statement of

worded "shall die by suicide," but in America the different phrases are regarded as synonymous. *Infra*, § 237. At the argument Sharswood, C. J., asked the counsel if this were not so; but the point was not noticed in the opinion, and the opinion followed a case in which the phrase used was, "die by his own hands." In the case of Ins. Co. *v.* Isett, 74 Penn. St. 176, the court below charged: "If the assured was not conscious of the act he was committing, but acted under an insane impulse or delusion sufficient to impair his understanding or will, or if his reason was so far overthrown by his mental condition that he was incapable of *exercising his judgment in regard to the consequences*, the defendants are liable;" and, furthermore, negatived one of the defendants' points, to the effect that there could be no recovery if at the time of his death the assured was conscious that death would follow. This charge was affirmed. These cases practically overrule Hartman *v.* Ins. Co., 21 Penn. St. 466, where Black, C. J., said that standing alone the words "die by his own hands," mean any sort of suicide.

[1] Life Association *v.* Waller, 57 Ga. 533; Merritt *v.* Ins. Co., 55 Ga. 103.

[2] Phillips *v.* Ins. Co., 26 La. Ann. 404.

[3] Breasted *v.* The Loan Co., 8 N. Y. 299; Ins. Co. *v.* Groom, 86 Penn. St. 92; Phadenhauer *v.* Ins. Co., 7 Heisk. (Tenn.) 567.

[4] Ins. Co. *v.* Moore, 34 Mich. 41. "Death by his own hands in the case of one *non compos* is as much the result of disease as death by fever or consumption," were the words of the court; "the very object of life insurance is to provide for death by disease or in the ordinary course of nature." And it was held that the policy could only be avoided when the person was *felo de se*, and there was criminality in the act.

opinion by Robertson, J., concurred in by Peters, J., that "there may be moral as well as intellectual insanity, and essentially contradistinguished from it."[1] But this view was emphatically repudiated by Williams, C. J., with whom concurred Hardin, J., forming, therefore, two out of the four judges by whom the case was heard. "The doctrine of moral insanity," said Williams, C. J., "ever dangerous as it is to the security of the citizen's life, and pregnant as it is with evils to society, has but little or no application to this case. Too uncertain and intangible for the practical consideration of juries, and unsafe in the hands of even the most learned and astute jurist, it should never be resorted to for exemption from responsibility save on the most irrefragable evidence, developing unquestionable testimony of that morbid or diseased condition of the affections or passions so as to control and overpower or subordinate the will before the act complained of; for if the *act* is to be evidence of moral insanity for the suicide, so it will be for the homicide, the parricide, the seducer and the ravisher." And, in respect to the position of the court below, that, if "at the *instant* of the commission of the act his (the deceased's) *will* was subordinated by any uncontrollable passion or *emotion* causing him to do the act, it was an act of moral insanity, and they ought, if they so believe, to find for the plaintiff," he declared that, "in all the vague, uncertain, intangible, and indefined theories of the most impracticable metaphysicians on psychology and moral insanity, no court of last resort in England and America, so far as has been brought to our knowledge, ever before announced such a startling, irresponsible, and dangerous proposition of law."

Rule in England as to phrase "die by suicide."

§ 236. In 1846, the question as to the construction of the phrase "die by suicide," came before the English exchequer chamber[2] on the following facts: Louis Schwabe, in 1836, insured his life for £999 with the defendants, the exception in this case being that "every policy effected by a person on his own life shall be void, *if such person shall commit suicide*, or die by duelling, or the hands of justice." Schwabe died in 1845, and, on a suit on the policy, it was shown that he voluntarily poisoned himself with sulphuric acid, under circum-

[1] See for a fuller abstract of this opinion, *supra*, § 178.

[2] Clift *v.* Schwabe, 3 Man. & Gr. 437; see White *v.* Assurance Co., 38 L. J. N. S. Ch. 53; Stormont *v.* Assurance Co., 1 F. & F. 22; Dufaur *v.* Ins. Co., 25 Beav. 599.

stances tending to show that he was of unsound mind. On the trial, Creswell, J., charged the jury, "that, in order to find the said issue for the defendants, it was necessary that the jury should be satisfied that Schwabe died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent; that the burden of proof as to his dying by his own voluntary act was on the defendants, but, that being established, the jury must assume that he was of sane mind, and a responsible moral agent, unless the contrary should appear in evidence." It was held, on a bill of exception, by Rolfe, Patteson, Alderson, and Parke, JJ. (Wightman, J., and Pollock, C. B., dissenting), that this direction was erroneous, and that the law, as stated by Rolfe, B., was, "that every act of self-destruction is, in common language, suicide, provided it be the intentional act of a party knowing the probable consequence of what he is about."

Rulings in this country.

§ 237. There have been, in comparison, but few cases before the American courts in which the policies were worded "shall die by suicide," and it has been held, and by cases sustaining each of the opposing doctrines, that there is no difference in meaning between the two phrases;[1] that is to say that whatever construction is to be put upon the proviso in relation to the question of insane suicide, the contract between the insurer and insured is the same, no matter which phrase is used. In Massachusetts, as we have already seen, where a policy used the phrase "die by suicide," it was held that mere insanity does not take a case out of the exceptions.[2] So it was held in a case in Tennessee[3] (1872), in which the right and wrong test was distinctly adopted, and Terry *v.* Ins. Co.,[4] as it was decided in the circuit court, was followed, the words of the policy being "die by suicide." In a recent (1875) case in Vermont,[5] the words were the same, and the lower court charged the jury that it was not enough that the insured was unable to distinguish right from wrong, but his mind must have been so unsound that it could be seen that the unsoundness killed him; that, if his mind was overthrown by an insane

[1] Life Ins. Co. *v.* Terry, *ubi supra;* Estabrook *v.* Ins. Co., 54 Me. 224.

[2] Cooper *v.* Ins. Co., 102 Mass. 277, *supra*, § 233.

[3] Phadenhauer *v.* Ins. Co., 7 Heisk. 567.

[4] 1 Dill. C. C. 403.

[5] Hathaway *v.* Ins. Co., 48 Vt. 335.

idea that he must take his own life, and the idea controlled himself and his reasoning faculties to that extent that he could not resist it, so that, although his own mind contrived the means by which his life was taken, and his physical strength carried them out and took it, in reality this insane idea or impulse, and not his mind or his will, took his life, the insurers were liable. This charge the supreme court declared was quite as favorable to the insurance company as the law allowed, and that a degree of insanity short of delirium or frenzy would excuse the act of suicide. It was further ruled that it does not follow that because an insane man knows that if he blows his brains out it will kill him, and that he does the act for that purpose, therefore the act was that of a sane mind, voluntarily and deliberately done.[1] In a Pennsylvania case already cited, in which the words were "shall die by suicide," the court followed Life Ins. Co. *v.* Terry, saying, however, nothing as to the difference in phraseology between the policy in that case and the policy before it.[2]

§ 238. It has been held, in New York, that, in the absence of any stipulation, a policy taken out for the benefit of a third party will not be avoided by the subsequent suicide of the insured.[3] In a later case it was argued that the act would be covered by the proviso against the death of the insured, "in the known violation of the law of any state," but this was disallowed.[4]

"In the known violation of the law of any state" does not extend to insanity.

§ 239. Of late the insurance companies have endeavored to guard themselves against insane suicide by extending the proviso to read

[1] But it is probable that the jury found that the deceased had committed suicide under the influence of an insane impulse which he could not resist, as the verdict was against the insurance company, which would bring the case within the proviso as specified in Van Zandt's case and in Dean's case. If this be so, as the charge to the jury more nearly approached the rule in those cases than the rule in Terry's case, the remarks of the supreme court quoted above must be taken to be *obiter*.

[2] Ins. Co. *v.* Groom, 86 Penn. St. 92, *supra*, § 234.

[3] Fitch *v.* Ins. Co., 59 N. Y. 557.

[4] Patrick *v.* Ins. Co., 4 Hun, 263. See May on Insurance, 2d ed. § 324. There are two strong *dicta* in Pennsylvania to the effect that even in the absence of any stipulation, a suicide by the insured would be a fraud upon the company, and hence would avoid the policy. Black, C. J., in Hartman *v.* Ins. Co., 21 Penn. St. 466, who comprehended in this the case of an insane suicide; and Trunkey, J., in Bank of Oil City *v.* Ins. Co., 6 Leg. Gaz. 348; 5 Big. Life Ins. Rep. 478.

"Sane or insane" is a good condition.

"if the insured shall die by suicide, sane or insane," etc. That the companies have a right to do so is indubitable, and it has been held that the only construction to be given to these words is the one that they bear on their face, namely, that the company in case of suicide is to be exempt from all liability.[1] But they are not meant to cover the case of unintentional self-destruction.[2]

Right and wrong test not applicable.

§ 240. It is not necessary for the defendant to show that there was a capacity on the part of the deceased to distinguish right from wrong. This is aside from the issue. That issue is, did the assured intend, freely and intelligently, to destroy himself? What his views of right and wrong were on the subject is immaterial. Suicide may have appeared to him under the circumstances even a meritorious act; but this would not take the case out of the exception. If he *intended* to do the act *freely—i. e.*, without constraint of an irresistible force, mechanical or moral; and if he intended to do it *intelligently—i. e.*, if his mind, when acting on the particular topic, was unswayed by insane delusion, then the exception covers the case, and the policy is avoided. And this brings the law on this point in harmony with

[1] Bigelow *v.* Ins. Co., 93 U. S. 284; Chapman *v.* Ins. Co., 6 Biss. 238; Mallory *v.* Ins. Co., 54 N. Y. 651; De Gogorza *v.* Ins. Co., 65 N. Y. 232; Pierce *v.* Ins. Co., 34 Wis. 389; Adkins *v.* Ins. Co., 70 Ill. 27.

[2] Pierce *v.* Ins. Co., 34 Wis. 389. Thus, death by an overdose of medicine, self-administered, does not avoid such a policy; Penfold *v.* Ins. Co. (N. Y. Court of Appeals, 1881), 11 Law Rep. 849; Lawrence *v.* Ins. Co., 5 Brad. (Ill.) 280; unless there was culpable negligence; Ins. Co. *v.* Lawrence, 8 Brad. 488.

In a letter from Horace Walpole to Bentley, dated Jan. 9, 1755, we have the following:—

"On the occasion of Mountford's story I heard another more extraordinary. If a man insures his life, this killing himself vacates the bargain. This (as in England almost everything begets a contradiction) has produced an office for insuring in spite of self-murder, but not beyond three hundred pounds. A man went and insured his life, securing this privilege of free-dying Englishmen. He carried the insurers to dine at a tavern, where they met several other persons. After dinner he said to the life-and-death brokers, 'Gentlemen, it is fit you should be acquainted with the company; these honest men are tradesmen to whom I was in debt, without any means of paying but by your assistance; and here I am your humble servant.' He pulled out a pistol and shot himself. Did you ever hear such a mixture of honesty and knavery?" Similar agreements have been held void as against public policy. Moore *v.* Woolsey, 4 E. & B. 243.

the general doctrine of insane delusions already declared.[1] If the deceased did not know what he was doing when he killed himself, he can be no more said to "have laid violent hands on himself," or "to have committed suicide," than he could be if his hand had been seized by superior force and thus made to discharge at his breast a fatal shot. No man can be charged with an act done by him in blind terror, or in unconsciousness, or under a strain of mental or moral compulsion which deprives him of his reason.[2] And if he be thus impelled to the act, the act is not chargeable as his.

Suicide not conclusive evidence of insanity.

§ 241. The pathological character of suicide is hereafter distinctively discussed.[3] It is enough now to say that suicide is not conclusive evidence of insanity in respect to a will executed even immediately previous.

[1] *Supra*, §§ 125–145.

[2] See *supra*, § 108 *et seq.*

[3] *Infra*, §§ 523, 636. See an interesting paper by Dr. Ordronaux, in 20 Am. Journ. of Ins. 369; an article by Royal Whitman, in American Journ. of Med. Sci. clxiv. p. 472; and articles in 34 Am. Journ. Ins. 425; 35 ibid. 37; and a letter to the editor of the Journ. Ment. Sci., vol. 23, p. 107.

[4] Chambers *v.* Queen's Proctor, 2 Curt. 415; Burrows *v.* Burrows, 1 Hagg. 109; Wolff *v.* Ins. Co., 7 Rep. 357; Brooks *v.* Barrett, 7 Pick. 94; Coffey *v.* Ins. Co., 44 How. 481; Weed *v.* Ins. Co., 70 N. Y. 561; Duffield *v.* Robeson, 2 Harr. 375; Ins. Co. *v.* Peters, 42 Md. 414; McElwee *v.* Ferguson, 43 Md. 479; Merritt *v.* Ins. Co., 55 Ga. 103; Phadenhauer *v.* Ins. Co., 7 Heisk. (Tenn.) 567; Com. *v.* Thornley, 47 Ill. 192; Hathaway *v.* Ins. Co., 48 Vt. 335. See May on Ins. 2d ed. § 325.

As illustrating this we have (1872) the following:—

"At an early period of his life, Lord Bathurst inquired of an old Bishop of Ely what was his secret for insuring longevity. 'Your question is too general, my lord,' replied the prelate, 'but if you will ask me any particular question, I will give you a specific answer.' 'Then, as to eating, my lord?' said Lord B. 'Why, my lord, I eat what I like, and as much as I like.' 'Next, as to drinking?' 'Why, with regard to drinking, my lord, I observe precisely the same rule; I drink what I like and as much as I like.' 'Excellent rules!' replied Lord B., 'which I am determined punctually to follow.' Lord B. did follow these rules to hilarity, but rarely to intemperance. He lived to the advanced age of ninety-one. Another rule which his lordship invariably pursued contributed, doubtless, much more to the prolongation of his life than the Epicurean code of the Bishop of Ely. This was bodily exercise in riding and walking, with which he suffered neither pleasure nor business to interfere, and which he habitually practised till within a short time of his death. For this practice, after his retirement from public life, he had great facilities in the extensive and various walks on his ample domain at Cirencester. In the autumn of the year 1775, a slight disease occurred in one of his knees, for which he was occasionally visited by Sir Cæsar Hawkins. The malady, though somewhat aggravated by a fall on a polished

floor in his own house, was apparently of no further consequence than as it interfered with his accustomed rides and walks in his park. On Thursday, September 9, 1775, Mr. Parry and his eldest son, afterwards Dr. Caleb Hillier Parry, dined with him. He ate and drank in his accustomed way, was all urbanity and mirth, quoted with fluency and exactness many appropriate lines from the Latin and English poets, and related many anecdotes of the wits who were the contemporaries of his earlier years. Among the rest he told the following story of Pope, who, in the former part of his life, had been desperately in love with Lady Mary Wortley Montague, though there now existed between these persons the most rancorous hatred, covered with the flimsy veil of polite civility.

"'Lady Mary went one day to Lord Burlington's, in Piccadilly, and inquired if his lordship was at home. The servant replied that he was not, but that Mr. Pope was above in one of the drawing-rooms. "Oh," said Lady Mary, "I should wish to see him; show me the room." The servant accordingly showed her up stairs, opened the drawing-room door, and, having announced her name, retired. After a short time, however, hearing the drawing-room bell ring, he reascended the stairs and met Lady Mary, who had just left the apartment. "You told me," said she, "that Mr. Pope was in the drawing-room; I saw nothing there but a great baboon asleep in an arm-chair."

"'This story was told by the servant to Lord Burlington, and, in the usual course of such reports, was whispered by some good-natured friend to Mr. Pope himself. The indignant poet shortly afterwards called in his carriage upon Lady Mary, whom he entreated to accompany him, in order, as he said, to show her the excellent effect produced by the substitution of rails for the dead brick wall which had intercepted, from the road, the view of Kensington Gardens. She accepted the invitation, and, notwithstanding the great imperfection of her sight, which she was extremely averse to acknowledge, but which prevented her distinguishing objects at the distance of twenty feet, most politely acquiesced in all the extravagant praises which, during an entire hour, Mr. Pope lavished on the beautiful scenery which everywhere struck the view through the pretended iron rails. The exhibition being ended, Mr. Pope took the earliest opportunity of communicating to all his friends the success with which he had thus retorted on Lady Mary her illiberal satire on his personal defects.'

"When the company rose, Lord Bathurst walked with little apparent difficulty into an adjoining room.

"This meal was the last that Lord Bathurst ever ate. Unable on account of his knee to take his accustomed exercise in the open air, and tired of an existence which was to be protracted on such terms, he determined, like Atticus, to cease to live. Inflexible to his purpose, from this moment he refused all sustenance, and thus, gradually sinking, expired on the Thursday following (Sept. 16), at the precise interval of one week from that day on which the narrator had witnessed his almost unrivalled blaze of literary and social talents. This fact respecting Lord Bathurst was more than once related by Mr. Parry, and was many years afterwards confirmed to his son by the succeeding earl, who accompanied the latter round the park in order to exhibit those spots which had been so often the scenes of his boyish felicity."—From *A Memoir of the Rev. Joshua Parry, Nonconformist Minister of*

Cirencester, with some original Essays and Correspondence, by the late Charles Henry Parry, F. R. S., edited by Sir John E. Eardley Wilmot, Bart., Recorder of Warwick. London: Hamilton, Adams & Co. 1872.

In Wolff *v.* Ins. Co. (U. S. Cir. Ct. E. D. Mich. 1879), *ut supra*, Brown, J., said: "It is insisted, however, that the insane acts relied upon were simply eccentricities of demeanor, or at most temporary hallucinations, which lasted but a few minutes at a time, and ceased entirely some months before his death, leaving him perfectly sane and able to take care of his business. It is quite true there is no presumption of the continuance of insanity temporary in its character; but I apprehend that in most if not all the cases that support that doctrine the delusions were connected with some bodily disease, such as fever, pleurisy, or delirium tremens, and necessarily ceased with returning health, or that they occurred so long previous to the commission of the act in question there could be no possible relation between them of cause and effect. People *v.* Francis, 38 Cal. 183; Staples *v.* Wellington, 58 Me. 459, 460; Hall *v.* Unger, 2 Abb. U. S. 514; Ins. Co. *v.* Peters, 42 Md. 414; Carpenter *v.* Carpenter, 8 Bush, 283; 2 Greenl. Ev. 689."

CHAPTER VII.

INSANE PERSONS AS WITNESSES.

Test is ability to understand oath, § 242.
Habeas corpus may bring in insane witness, § 243.
Corroboration by sane witnesses important, § 244.
Credibility a question for the jury; and so as to witnesses under influence of narcotics, etc., § 245.

Test is ability to understand an oath.

§ 242. A person called as a witness is not rendered incompetent by insanity to be sworn, if he understands what is the nature of an oath.[1]

[1] R. *v.* Hill, 2 Den. C. C. 254; T. & M. 582; Fennell *v.* Tait, 1 C. M. & R. 584; 5 Tyr. 218; Spittle *v.* Walton, L. R. 11 Eq. 420; Boughton *v.* Knight, L. R. 3 P. & D. 72; Holcomb *v.* Holcomb, 28 Conn. 177; Ins. Co. *v.* Hunt, 14 Hun, 169; Hand *v.* Burrows, 23 Hun, 330; People *v.* N. Y. Hospital, 3 Abb. N. C. 229, n.; Com. *v.* Reynolds, cited 10 Allen, 64; Kendall *v.* May, 10 Allen, 59; Coleman *v.* Commonwealth, 25 Gratt. 865; Campbell *v.* State, 23 Ala. 44. See Wh. Crim. Ev. § 370; see also Livingston *v.* Kiersted, 10 Johns. 362.

In R. *v.* Hill, *ut supra*, the defendant (Browne's Med. Jur. of Insan., Lond. 1871) was an attendant in charge of a ward in a lunatic asylum. He was indicted for the manslaughter of Moses James Barnes, one of the patients under his care. The prisoner was tried before Coleridge, J., assisted by Cresswell, J., at the central criminal court. He was convicted, but a question was reserved for the opinion of the court as to the propriety of having admitted a witness of the name of Richard Donelly, who was a patient in Mr. Armstrong's lunatic asylum, at Camberwell, on the part of the prosecution. When Donelly was called, he was examined by the prisoner's counsel before he was sworn. In the course of the preliminary examination he said he was fully aware that he had a spirit, and twenty thousand of them; they were not all his; they spoke to him constantly. He fully understood the nature of an oath, and declared his belief in religion, and that he was a Roman Catholic. A medical witness believed him to be capable of giving an account of any transaction that happened before his eyes. He was then sworn, and gave a perfectly connected and rational account of the transaction which he reported himself to have witnessed. He was not certain as to the day of the week on which the circumstances he spoke of took place, and on cross-examination said: "These creatures

§ 243. A *habeas corpus ad testificandum* may be issued to bring into court a witness from an insane asylum.[1]

Habeas corpus may bring witness.

§ 244. "It is well," remarks Mr. Browne, in the work insist upon it it was Tuesday night, and I think it was Monday." Whereupon he was asked, "Is what you have told us what the spirits told you, or what you recollect without the spirits?" And he said, "No, the spirits assist me in speaking of the date. I thought it was Monday, and they told me it was Christmas-eve—Tuesday; but I was an eye-witness, an ocular witness, to the fall to the ground." The question for the court of criminal appeal was—Richard Donelly's competeney as a witness. The accused having been convicted, the case was argued before Lord Campbell, C. J., Coleridge and Talfourd, JJ., and Alderson and Platt, BB. The conviction was upheld. Lord Campbell, in delivering his judgment, said: "The question is important, and has not yet been solemnly decided after argument; but I have no doubt that the rule was properly laid down by Parke, B., in the case which was tried before him, and that it is for the judge to say whether the insane person has the sense of religion in his mind, and whether he understands the nature and sanction of an oath, and then the jury are to decide on the credibility and weight of his evidence. . . . A man may, in one sense, be *non compos*, and yet be aware of the nature and sanction of an oath. In the particular case before the court, I think the judge was right in admitting the witness; I should certainly have done so myself. . . . It has been argued that any particular delusion, commonly called monomania, makes a man inadmissible. This would be extremely inconvenient in many cases in the proof either of guilt or innocence; it might also cause serious difficulties in the management of lunatic asylums. I am, therefore of opinion, that the judge must in all cases determine the competency, and the jury the credibility. Before he is sworn, the insane person may be cross-examined, and witnesses called to prove circumstances which might show him to be inadmissible; but in the absence of such proof he is *prima facie* admissible, and the jury must attach what weight they think fit to his testimony." These views have been adopted in several recent cases, though in many states parties who are of unsound mind at the time of examination are forbidden by statute to testify. See Wh. Crim. Ev. § 371; Waring *v.* Waring, 6 Moore's P. C. C. p. 349; Holcomb *v.* Holcomb, 28 Conn. 177; Coleman *v.* Com., 25 Gratt. 865; Sarbach *v.* Jones, 20 Kan. 497; Hand *v.* Burrows, 23 Hun, 330; Ins. Co. *v.* Hunt, 14 Hun, 169; and see a note by Dr. Ordronaux to People *v.* N. Y. Hospital, 3 Abb. N. C. 229. In this connection, adds Mr. Browne (Med. Jur. of Ins. *ut supra*), the following cases may be consulted: R. *v.* Eriswell, 3 T. R. 707; Currie *v.* Child, 3 Campb. 283. See also Chapman *v.* Greaves, 2 Campb. 333, n.; Adams *v.* Kerr, 1 Bos. & P. 360; Cuncliffe *v.* Sefton, 2 East, 183; and Bernett *v.* Taylor, 9 Ves. Jr. 381; R. *v.* Morley, quoted in R. *v.* Hill.

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[1] Spittle *v.* Walton, L. R. 11 Eq. 420; 40 L. J. Chanc. 368. See Fennell *v.* Tait, *ut supra*.

Corroboration by sane witnesses important.

already cited, "in all cases in which the evidence of persons of unsound mind is had recourse to, to endeavor to corroborate the testimony in some particulars, at least, by means of the depositions of sane witnesses. The importance of this rule will be made manifest by the statement of the evidence of James Sumner, an inmate in the Birmingham Borough Lunatic Asylum, by means of which William Braley, a warden in said asylum, was a few weeks ago proved, to the satisfaction of the stipendiary, to have caused the death of a man named John Hinton. The prisoner Braley was committed for trial at the next assizes."[1]

Credibility for jury; and so as to witnesses under influence of narcotics, etc.

§ 245. In another work it is shown that deficiency in perceptive powers in a witness, if total, excludes;[2] that a witness may be examined as to his capacity;[3] that credibility depends not only on veracity, but on competency to observe;[4] that incapacity to relate may affect competency;[5] that intoxicated witnesses may be excluded;[6] and that credibility is generally for the jury.[7] The same remarks apply to witnesses testifying to facts which transpired while they were under the influence of chloroform or ether. In cases of rape, to be hereafter reported under that particular head,

January, 1870, mentions an interesting case of the admission of the testimony of an insane witness. A confined lunatic was beaten by his keeper, and the results were pleuritis and death. The only witness was a fellow-lunatic. The latter, who had been for two months convalescent, had suffered from melancholy with hallucination of the senses. His testimony was exact, and betrayed no traces of insanity. Though the issue rested on his credibility, the defendant was convicted.

A remarkable prosecution was instituted in Maryland, in 1866, against the officers of the Mount Hope Institution for the Insane, in that state, the prosecutors being lunatic patients. The complaint turned out to be unfounded, and the defendants were acquitted, but there was no question as to the *admissibility* of the prosecutors as witnesses, incredible as some of their statements were afterwards regarded. See report in 23 Am. Journ. of Insan. 311.

[1] The prisoner Braley, Mr. Browne states, has, since the above was written, been tried and acquitted. The jury seemed to place no reliance upon the evidence of Sumner, although he was evidently quite sane at the time it was given. Sumner admitted that, previous to his asylum experience, he had known something of prisons, which may to some extent account for the verdict.

[2] Wh. on Ev. § 401.

[3] Ib. § 403.

[4] Ib. § 404.

[5] Ib. § 405.

[6] Ib. § 418.

[7] Ib. § 417.

testimony of this kind has been received as sufficient to sustain convictions; and, unless such testimony is held admissible (its credibility being for the jury), there would be no redress for injuries inflicted on persons under the influence of anæsthetics. At the same time it is proper to call attention to the following points stated in an interesting essay, touching the value of testimony of this class, communicated in 1860 to the Ohio Medical Society by Dr. T. L. Wright, of Bellefontaine, and printed among the transactions of that society:—

"1st. That will is always active when there is mental consciousness.

"2d. That will cannot be directly impressed by another will, but that the judgment may be misled, and the will, though free, may act upon false conceptions in a manner different from what it would do if the mind and senses were perfectly active.

"3d. There may be venereal connection with a female while she is conscious and unwilling; but there may be no venereal connection with a female, while she may honestly believe she has been under the delusion of organic sensibilities, occasioned by the peculiar action of chloroform upon her nervous system.

"4th. It is impossible for a woman very often to decide whether actual connection has been had or not.

"5th. The evidence of a person, respecting transactions that occur to the mind while partly conscious, is always liable to the most monstrous fallacies, and it should not be received as sufficient proof of any fact.

"6th. Evidence of females, respecting rape upon themselves while unconscious from chloroform, is particularly liable to suspicion.

"7th. Evidence of females respecting rape under such circumstances should be subjected to all the rules and exceptions of circumstantial evidence, and should be fully corroborated by other circumstances."

CHAPTER VIII.

EVIDENCE.

I. Mode of Proof.

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All persons presumed to be sane, § 247.
Sanity presumed to continue, § 248.
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In such cases burden is on party setting up lucid interval, § 250.
In criminal cases preponderance of proof required to prove criminal lunacy, § 251.
Insanity to be inferred from facts, § 252.
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II. Witnesses.

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May be examined as to scientific authorities, § 266.
May be examined as to hypothetical case, but not as to disputed facts, § 267.
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And because there is no expert appellate court, § 273.
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Their testimony should not be speculative, § 275.
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III. Books.

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I. PROOF.

Question belongs to distinctively legal treatises.

§ 246. The consideration in detail of the technical rules bearing on the proof of insanity belongs more properly to distinctively legal treatises. It will be

sufficient for the purposes of the present chapter to note the conclusions which in those works are given.

All persons presumed to be sane.

§ 247. Sanity being the normal condition, the presumption of law is that all persons whose conduct comes up for legal examination are sane. It is true that there may be something in the act which is to be examined which is so preposterous as to make it improbable that it could have sprung from a sane agent. But this is a matter of extrinsic proof, and does not affect the principle that until contesting evidence is received, all persons are to be held sane.[1]

Sanity presumed to continue.

§ 248. In addition to this general presumption of law, bearing on all human beings, we have a concrete presumption of fact, varying with each special case, that character continues, and that a person who was sane yesterday is sane to-day.[2]

Chronic insanity presumed to be continuous.

§ 249. When chronic insanity, also, has supervened, then it is a presumption of fact that it continues. Undoubtedly this, as has been observed, is in one sense a *petitio principii*, it being equivalent to saying that that which is chronic continues. But there is something more than a *petitio principii* in the position that a state which existed yesterday will be presumed to continue to exist to-day. And this is a position that applies to all conditions which have in them the element of permanence.[3]

In such cases burden is on party setting up lucid interval.

§ 250. If chronic insanity is established, the burden of proving a lucid interval, during which an instrument is alleged to have been executed, is on the party setting up such instrument.[4]

It is otherwise, however, when the prior insanity alleged was spasmodic and parenthetical,[5] or consisted of *delirium tremens*.[6]

[1] *Supra*, §§ 61 *et seq.* Wh. on Ev. §§ 1226–1252.

[2] Wh. on Ev. § 1252.

[3] Wh. on Ev. § 1253. See 24 Alb. L. J. 304.

[4] See cases cited § 61, and also § 744; Wh. on Ev. § 1253; and see State *v.* Spencer, 21 N. J. L., 196; R. *v.* Stokes, 3 C. & K. 188; R. *v.* Taylor, 4 Cox C. C. 155; Cartwright *v.* Cartwright, 1 Phill. 90; Hoge *v.* Fisher, 1 P. C. C. R. 163; Hix *v.* Whittemore, 4 Metc. 545; Trish *v.* Newell, 62 Ill. 196; 1 Jarm. Wills, 65.

[5] *Supra*, § 61. Lewis *v.* Baird, 3 McLean, 55; Menkins *v.* Lightner, 18 Ill. 282; Achey *v.* Stephens, 8 Ind. 411; State *v.* Wellington, 58 Maine, 453; Trish *v.* Newell, 62 Ill. 196.

[6] State *v.* Sewell, 3 Jones Law (N. C.) 250.

Whether the good sense of a will made during an alleged lucid interval is admissible to prove the intermission of the insanity, has been questioned.[1] But if the will be shown to be the free act of the person making it, its contents must always be received as giving materials from which the party's mental condition can be inferred.[2]

In criminal issues preponderance of proof required to prove criminal lunacy.

§ 251. In criminal issues, as is elsewhere shown, there has been much discussion on the question whether insanity, when a defence, must be proved beyond reasonable doubt. The better opinion is, that, to sustain a verdict of criminal lunacy, there should be a preponderance of proof sustaining the hypothesis of insanity, but that when the defendant's mental condition enters into the question (*e. g.* in cases where intention or knowledge has to be shown) then he cannot be convicted of an offence requiring the particular intent or knowledge unless it appears beyond reasonable doubt that he had mental capacity for the purpose.[3] But in any view the burden of proof is on the party setting up insanity.[4]

Insanity to be inferred from facts.

§ 252. Insanity is to be inferred from all the facts in the particular case in litigation. Whatever is logically calculated either to establish or to repel the hypothesis of insanity is admissible on such an issue.[5]

Physical peculiarities and diseases admissible.

§ 253. Physical peculiarities may be put in evidence when likely to explain the party's mental condition; and so of diseases likely to have an effect on the mind.[6]

So of hereditary tendency.

§ 254. Proof of insanity among relations is also admissible when the relationship is sufficiently near to lead to the inference of insanity in the blood.[7]

Inquisition *prima facie* proof.

§ 255. How far an inquisition of lunacy is admissible to prove insanity is elsewhere discussed.[8] An inquisition of lunacy may be *prima facie* evidence when offered to affect the credibility of a witness, though even if admissible in such a case it is open to rebuttal.[9] When offered against parties to the

[1] See Jackson *v.* Van Dusen, 5 Johns. 144.

[2] *Supra*, §§ 61 *et seq.* Kingsbury *v.* Whitaker, 32 La. Ann. 1055; 34 Alb. L. J. 304.

[3] Wh. Cr. L. 8th ed. § 61.

[4] Ib. § 60.

[5] Wh. on Ev. § 1254.

[6] Wh. Cr. L. 8th ed. § 64.

[7] Wh. Cr. L. 8th ed. § 65.

[8] Wh. on Ev. §§ 403, 812, 1254.

[9] Wh. on Ev. § 403.

procedure, others than the alleged lunatic, it is conclusive unless fraud be shown.[1] So far as concerns third parties, a finding may be admissible to determine the burden of proof; so far as concerns the party himself, who, on the hypothesis of his insanity, is incompetent to bind himself, it may be only *prima facie* proof.[2]

Hearsay inadmissible.

§ 256. Hearsay in a neighborhood is in any view inadmissible, either to prove or disprove sanity.[3]

II. WITNESSES.

Non-experts as well as experts may give opinion as to sanity.

§ 257. The admission in evidence of the opinions of friends, of nurses, and of attendants, though not experts in mental disease, may be justified on several grounds. In the first place, if such evidence is excluded, no other can be found that can so satisfactorily take its place. An attendant, who watches continuously by the bedside of a patient—a business friend having constant access to his counting-room—can form, if intelligent and experienced, a far more reliable opinion of the patient's mental state, than could a medical expert, judging merely from occasional visits, visits at which excitement would be natural, if not simulation attempted. If the opinion of the specialist, on comparatively imperfect information, is admissible, we cannot exclude the opinion of the non-specialist. In the second place, opinion is in most cases only facts at short hand, and this is

[1] Wh. on Ev. §§ 811, 1254.

[2] Ib. See *supra*, § 13.

It may be shown that the inquisition was *ex parte* and partial. Bannatyne *v.* Bannatyne, 14 Eng Law and Eq. 581; 16 Jur. 864; 2 Rob. 475. The finding is not binding on third parties, and operates merely to destroy the presumption of sanity, and to throw the burden of proving it on the party alleging it. Snook *v.* Watts, 11 Beav. 105; Elliott *v.* Ince, 7 De G. M. & G. 475.

The effect of such commissions on the party himself, so far as involves his right to contract, has been already discussed. Where an inquisition finds that a man is a lunatic or habitual drunkard, it is *prima facie* evidence of incompetency at any time covered by the finding, and a party setting up a contract made by the lunatic or habitual drunkard during this time must show he was sane at its execution, for the presumption in favor of sanity is thereby changed. Noel *v.* Karper, 53 Penn. St. 97.

Fits of insanity for twenty years prior to the execution of certain deeds by a man found some years afterwards, by a commission, to have been all along insane, have been ruled in England to be no answer to a *prima facie* case, on an issue to his sanity at the execution of the deeds. Ferguson *v.* Barrett, 1 F. & F. 613. See Jacobs *v.* Richards, 18 Beav. 300.

[3] Wh. on Ev. § 1254.

eminently the case with regard to opinions as to sanity. It may be said that the facts on which an opinion as to sanity is based should be given, not the opinion. But when we inquire for these facts, we find that these are also opinions. "My opinion is that the patient was insane." "From what facts do you infer this?" "He was excited; he talked incoherently; his manner was wild." Yet each of these specifications is an opinion. If we are to reject opinions, therefore, in such cases, we must reject the only material from which a judgment as to sanity can be drawn. And in the third place, it may be questioned whether the opinion of an intelligent and experienced observer as to sanity is not after all primary. If we want to know whether a particular event occurred in day or in night, we put the question directly, "was it day?" We do not ask whether there was sunlight on one place or shadows on another, or whether the objects on which the observer's eye was turned were radiant in their specific colors, or were colorless in the darkness of night. And so with insanity. It is a condition which impresses itself as an aggregate on the observer. We cannot take it to pieces. If we do the effect is gone. The grand effect alone is that from which we are to judge. It is true that we must give reasons, if asked, for this effect. But, after all, it is the effect that determines. For these and other reasons it has been held that non-experts, when intelligent and experienced, may be asked as to their opinion of the sanity of a person with whom they have been well acquainted.[1]

[1] Wheeler *v.* Alderson, 3 Hagg. 602; Wright *v.* Tatham, 5 Cl. & F. 692; Harrison *v.* Rowan, 3 Wash. C. C. 580; Ins. Co. *v.* Rodel, 95 U. S. 232; Hardy *v.* Merrill, 56 N. H. 227; Cram *v.* Cram, 33 Vt. 15; Fairchild *v.* Bascomb, 35 Vt. 398; Hathaway *v.* Ins. Co., 48 Vt. 335; Com. *v.* Sturtivant, 117 Mass. 122; Grant *v.* Thompson, 4 Conn. 208; Kinne *v.* Kinne, 9 Conn. 102; Real *v.* People, 42 N. Y. 270; Fagnan *v.* Knox, 40 N. Y. Sup. Ct. 41; Rambler *v.* Tryon, 7 S. & R. 90; Wilkinson *v.* Pearson, 23 Penn. St. 177; Titlow *v.* Titlow, 54 Penn. St. 216; Castner *v.* Sliker, 33 N. J. L. 95, 507; Townshend *v.* Townshend, 7 Gill, 10; Weems *v.* Weems, 19 Md. 334; Williams *v.* Lee, 47 Md. 321; Clark *v.* State, 12 Ohio, 483; Doe *v.* Reagan, 5 Blackf. 217; Beaubien *v.* Cicotte, 12 Mich. 459; Butler *v.* Ins. Co., 45 Iowa, 93; Clary *v.* Clary, 2 Ired. L. 78; Powell *v.* State, 25 Ala. 21; Stuckey *v.* Bellah, 41 Ala. 700; Wilkinson *v.* Moseley, 30 Ala. 562; Baldwin *v.* State, 12 Mo. 223; Dove *v.* State, 3 Heisk. 348; People *v.* Sanford, 43 Cal. 29; Pigg *v.* State, 43 Tex. 108; Garrison *v.* Blanton, 47 Tex. 299; McClackey *v.*

Such testimony, when given by persons of probity, intelligence, and experience, constantly about the patient, is more likely, in cases of alleged chronic idiocy or delirium, to lead to right conclusions, than is the testimony of experts, employed professionally, and paying only occasional visits.[1]

§ 258. But while this is the case with such insanity as may be readily determined by non-experts, and in cases in which opinion is a mere rendering of facts at short-hand, it is otherwise as to occult conditions of rare occurrence, concerning which those versed in the treatment of the insane are best qualified to speak. As to these, inexperienced lay attendants or friends cannot, it is said, give opinions, but are limited to a statement of such facts as are within their range of observation.[2] And there is a line of cases ruling that in no case can a non-expert give an opinion detached from the facts on which it rests.[3]

Not competent as to occult conditions.

§ 259. An important distinction, however, is to be here noticed. An expert in mental disease may be asked as to a hypothetical case. He is supposed to be familiar with the workings of mental disease; and the question put to him is virtually this: "Judging from your experience

Non-experts cannot be asked as to hypothetical case.

State, 5 Tex. App. 320. That some qualification is a prerequisite, see Sutherland *v.* Hawkins, 56 Ind. 343.

[1] Rutherford *v.* Morris, 77 Ill. 397; Rankin *v.* Rankin, 61 Mo. 295.

[2] As limiting non-experts to a bare statement of facts, see State *v.* Pike, 49 N. H. 399; Com. *v.* Wilson, 1 Gray, 337 (but see Hardy *v.* Merrill, 56 N. H. 227; Com. *v.* Sturtivant, 117 Mass. 122); Dewitt *v.* Barley, 5 Seld. 371; Clapp *v.* Fullerton, 34 N. Y. 190; Real *v.* People, 42 N. Y. 270; Sears *v.* Schafer, 1 Barb. 408; Higgins *v.* Carlton, 28 Md. 115; Runyan *v.* Price, 15 Ohio St. 1; Farrell *v.* Brennan, 32 Mo. 328; Gehrke *v.* State, 13 Tex. 568. From this limitation, however, subscribing witnesses are excepted. Ware *v.* Ware, 8 Greenl. 42; Poole *v.* Richardson, 3 Mass. 330; Logan *v.* McGinnis, 12 Penn. St. 27; Titlow *v.* Titlow, 54 Penn. St. 216; Egbert *v.* Egbert, 78 Penn. St. 326; Elder *v.* Ogletree, 36 Ga. 64.

[3] Poole *v.* Richardson, 3 Mass. 330; Hathorn *v.* King, 8 Mass. 371; Dickinson *v.* Barber, 9 Mass. 225; Kinne *v.* Kinne, 9 Conn. 102; Vanauken *ex parte*, 10 N. J. Eq. 186; Lowe *v.* Williamson, 2 N. J. Eq. 82; Sloan *v.* Maxwell, 3 N. J. Eq. 563; Gardiner *v.* Gardiner, 34 N. Y. 155; Sisson *v.* Conger, 1 Thomp. & C. 564; Clapp *v.* Fullerton, 34 N. Y. 190; Howell *v.* Taylor, 18 N. Y. Sup. Ct. 214; Rambler *v.* Tryon, 7 Serg. & R. 90; Bricker *v.* Lightner, 40 Penn. St. 199; Gibson *v.* Gibson, 9 Yerg. 329; Dorsey *v.* Warfield, 7 Md. 65; Doe *v.* Reagan, 5 Blackf. 217; Potts *v.* House, 6 Ga. 324; Dicker *v.* Johnson, 7 Ga. 484; Walker *v.* Walker, 14 Ga. 242; Johnson *v.* State, 17 Ala. 618; Farrell *v.* Brennan, 32 Mo. 328; State *v.* Coleman, 27 La. Ann. 691.

in such cases, are symptoms of a particular class the marks of an unsound mind?" And this is admissible.[1] On the other hand, it is inadmissible to ask a non-expert such questions, for the reason that he has no experience in treating such diseases as a class.[2] And the prevalent opinion is that even an expert, while he may be asked as to a hypothetical case, cannot be asked his opinion on the facts put in evidence in a particular case, as this would put him in the place of the jury, and commit to him the determining not merely the meaning, but the credibility of the testimony.[3]

Subscribing witness admissible as to sanity

§ 260. Subscribing witnesses to wills may, even on the strictest rule, be always permitted to answer as to the testator's sanity.[4]

Non-experts admissible as to drunkenness.

§ 261. It is conceded, even by the courts most rigorous in limiting such testimony, that any witness, layman or expert, unskilled or skilled, may testify as to the fact of intoxication.[5]

§ 262. Experts in mental science, and in the treatment of the

[1] Dexter *v.* Hall, 15 Wall. 9; U. S. *v.* McGlue, 1 Curtis, 1; Sills *v.* Brown, 9 C. & P. 604; Spear *v.* Richardson, 37 N. H. 23; Fairchild *v.* Bascomb, 35 Vt. 398; Hathaway *v.* Ins. Co., 48 Vt. 335; Com. *v.* Rogers, 7 Met. 500; Com. *v.* Rich, 14 Gray, 335; Hoard *v.* Peck, 56 Barb. 502; Harnett *v.* Garvey, 66 N. Y. 641; Negro Jerry *v.* Townshend, 9 Md. 145; Choice *v.* State, 31 Ga. 424; Davis *v.* State, 35 Ind. 496; Bishop *v.* Spining, 38 Ind. 143; Wright *v.* Hardy, 22 Wis. 348; Wilkinson *v.* Moseley, 30 Ala. 562; and cases cited in Wh. on Ev. § 452.

[2] Com. *v.* Rich, 14 Gray, 335; State *v.* Klinger, 46 Mo. 228; Caleb *v.* State, 39 Miss. 722; Russell *v.* State, 53 Miss. 368.

[3] R. *v.* Higginson, 1 C. & K. 129; Sills *v.* Brown, 9 C. & P. 604; R. *v.* Frances, 4 Cox C. C. 57; R. *v.* Richards, 1 F. & F. 87; Dexter *v.* Hall, 15 Wall. 9; Willey *v.* Portsmouth, 35 N. H. 303; Perkins *v.* R. R., 44 N. H. 223; Woodbury *v.* Obear, 7 Gray, 467; Miller *v.* Smith, 112 Mass. 475; Draper *v.* Saxton, 118 Mass. 431; Brill *v.* Flagler, 23 Wend. 354; People *v.* McCann, 3 Parker C. R. 272; Reynolds *v.* Robinson, 64 N. Y. 589; State *v.* Powell, 2 Halst. 244; Kempsey *v.* McGinnis, 21 Mich. 123; Bishop *v.* Spining, 38 Ind. 143; Phillips *v.* Starr, 26 Iowa, 349; Butler *v.* Ins. Co., 45 Iowa, 93; State *v.* Medlicott, 9 Kans. 257; Choice *v.* State, 31 Ga. 424. But see Getchell *v.* Hill, 21 Minn. 464.

[4] Chase *v.* Lincoln, 3 Mass. 236; Poole *v.* Richardson, ib. 330; Buckminster *v.* Perry, 4 Mass. 593; Needham *v.* Ide, 5 Pick. 510; Castner *v.* Sliker, 33 N. J. L. 95, 507.

[5] State *v.* Pike, 49 N. H. 399; Gahagan *v.* R. R., 1 Allen, 187; People *v.* Eastwood, 14 N. Y. 562.

Experts admissible as specialists.

insane, as well as in all other sciences and professions, are admissible to testify as specialists in their particular line.[1]

Are entitled to special fees.

§ 263. When required to give time and labor to the elucidation of questions on trial, the better opinion is that experts should be entitled to special fees.[2]

Cannot be examined as to matter of common knowledge.

§ 264. An expert cannot be examined as to a matter of common knowledge concerning which a juror may form an independent opinion, nor as to a matter of mere mental or moral philosophy or of domestic jurisprudence.[3]

Whether matter belongs to expert is for court.

§ 265. Whether a matter belongs distinctively to an expert is for the determination of the court trying the case.[4]

May be examined as to scientific authorities.

§ 266. An expert may be examined as to scientific authorities for the purpose either of sustaining or assailing his conclusions.[5]

May be examined as to hypothetical case, but not as to disputed facts.

§ 267. An expert may be examined as to a hypothetical case;[6] and it has also been held that, when the facts are undisputed, he may be asked as to their bearing on sanity. But he cannot, in any case where the meaning and bearing of the facts are disputed, be examined as to his opinion as to such facts.[7]

Difficulty in determining who are experts as to insanity.

§ 268. Here emerges a new difficulty in this vexed issue. "Experts" are to have a certain degree of credit attached to their testimony, but who are "experts?" Forensic-psychological medicine is the specialty; and an expert in this specialty must be skilled in three departments of science: (1), law, sufficient to determine what is the "responsibility" which is to be the object of the contested capacity; (2) psychology, so as to be able to speak analytically as to the properties of the human mind; (3) medicine, so far as concerns the treatment of the insane, so as to speak inductively on the same subject. If either of these factors is wanting, a witness cannot be technically an expert. But while, on strict principles, these

[1] Wh. on Ev. § 434.
[2] Ibid. § 380.
[3] Ibid. § 436.
[4] Ibid. § 437.
[5] Ibid. § 438.
[6] Ibid. § 452.
[7] Ibid.; *supra*, § 259.

tests should be applied, the courts have relaxed first one and then another limitation until the prevalent opinion now is that all persons who have made mental disease a practical study, or who have been employed in the professional care of the insane, are to be regarded as experts in insanity.

No sufficient test of capacity.

§ 269. It has been frequently said, as will hereafter be seen, that neither "quacks" nor mere speculative theorists are admissible as experts. But who are "quacks?" Are practitioners of new, and what may at the time be professionally viewed as heretical, schools, "quacks?" This would have disqualified both Willis and Esquirol, each of whom was for a time viewed as a quack by the body of conservative practitioners. Is the adherer of a system which, though venerable and supported by high past authority, is now regarded as exploded? Would a homœopathic physician be an expert in *materia medica?* Would one of Bishop Berkeley's disciples be an expert as to the value of tar-water? Is even a psychological physician of eminence an expert as to matters exclusively speculative or ethical The latter question was properly negatived in 1869, in the court of appeals of Kentucky, by Chief Justice Williams, who said, that "the opinions of experts, not founded on science, but on a mere theory of morals or ethics, whether given by professional or unprofessional men, are wholly inadmissible as evidence. Hence the opinion of even physicians, that no sane man in a Christian country would commit suicide, not being founded on the science or phenomena of the mind, but rather a theory of morals, religion, and future responsibility, is not evidence."[1] And such is undoubtedly the law.

Testimony to be closely scrutinized.

§ 270. The respect which was once paid to the testimony of experts, and which was recorded in former editions of this work, has of late years greatly diminished.[2]

Thus Chief Justice Chapman, of Massachusetts, on the trial of Andrews, in 1868,[3] said, "I think the opinions of experts are not so highly regarded now as they formerly were, for, while they afford great aid in determining facts, it often happens that experts can be found to testify to any theory, however

[1] Ins. Co. *v.* Graves, 6 Bush (Ky.), 290.

[2] See Wh. on Ev. § 722.

[3] Pamph. R. p. 356.

absurd." And Judge Davis, of the supreme court of Maine,[1] went so far as to say, "If there is any kind of testimony that is not only of no value, but even worse than that, it is, in my judgment, that of medical experts. They may be able to state the diagnosis of a disease more learnedly; but upon the question, whether it had, at a given time, reached such a stage that the subject of it was incapable of making a contract, or irresponsible for his acts, the opinion of his neighbors, if men of good common sense, would be worth more than that of all the experts in the country." And Judge Redfield, in commenting on this case, says, that there seems to be "but one opinion as to the fact that this kind of testimony is extremely unsatisfactory. . . . We are more and more confirmed in an opinion that the difficulty comes largely from the manner in which the witnesses are selected. . . . If the state, or the courts, do not esteem the matter of sufficient importance to justify the appointment of public officers, . . . it is certain the parties must employ their own agents to do it; and it is perhaps almost equally certain, that if it be done in this mode it will produce two trained bands of witnesses, in battle array against each other, since neither party is bound to produce, or will be likely to produce, those as their witnesses who will not confirm their views."

So also an eminent federal judge, Judge Woodruff, said to a jury in 1871, that, "where the opinion (of experts) is speculative, theoretical, and states only the belief of the witness, while yet some other opinion is consistent with the facts stated, it is entitled to but little weight in the minds of the jury. Testimony of experts of this latter description, and especially where the speculative and theoretical character of the testimony is illustrated by opinions of experts on both sides of the question, is justly the subject of remark, and has been often condemned by judges as of slight value. And like observations apply to a greater or less degree to the opinions of witnesses who are employed for a purpose and paid for their services; who are brought to testify as witnesses for their employers. . . . This condemnation is not always applicable; often it would be unjust. Where an expert of integrity and skill states conclusions which are the necessary or even the usual results of

[1] Neal's case, cited 1 Redfield on Wills, *101, and see further cases cited Wh. on Ev. § 454.

the facts upon which his opinion is based, the evidence should not be lightly esteemed or hastily discredited."[1]

Difficulty induced by speculative tendencies of experts.

§ 271. Or, to put the point in other language: There is no theory so absurd but that it has found some philosopher by whom it is maintained. "Nihil tam absurde dici potest, quod non dicatur ab aliquo philosophorum."[2] Hence there is no theory so absurd that, on a trial, some unique philosopher may not be secured to testify that he believes it. Of this we have had a number of illustrations in the preceding pages.[3] Experts have been found to testify that no sane person commits suicide, and that all suicides are insane; that all men are more or less insane; that certain propensities or faculties can become insane by themselves, and when insane are irresistible; that very bad people, and especially old convicts, are, as a rule, insane; and that certain signs, which signs the great body of the profession regarded as indifferent, are sure marks that insanity has set in. There is, in fact, no psychological defence, no matter how whimsical, that has not been based on the speculations of isolated experts, and that has not found some isolated experts to swear to it on trial.

And from the fact that experts are feed by parties.

§ 272. Another difficulty is that experts are now employed systematically and specially feed by the parties calling them. They are as much counsel in their specialty as the solicitors and barristers in a case are counsel in matters of law. When thus employed, they lose all judicial authority. It is impossible but that they must take a strong bias from the party calling them; and even were this not the case, the policy of the law forbids that a person receiving the special fee from a party should have any other authority in a case beyond that to which he is entitled on the principles of sound logic. If there is reason to believe what he says, he should be believed. But he should not be believed because he is an expert.[4]

And so because there is no expert appellate court.

§ 273. That the sober practical thought of the great body of alienists rejects such extravagances cannot be questioned; but how are the views of this great body to be ascertained? Of course it is easy for a party to summon the single expert who may happen to have propounded

[1] Woodruff, J., Gay *v.* Ins. Co., 9 Blatch. 142; 2 Big. Ins. Rep. 14.

[2] Cicero, De Divinatione, ii. 58.

[3] See *supra*, §§ 190–195. On this topic see more fully Wh. on Ev. § 454.

[4] Wh. on Ev. §§ 454, 722. *Supra*, § 33.

the bizarre theory which is necessary to sustain such party's case. But how is such expert to be contradicted? How is it to be shown that the whole sense of his profession is against him, and that he is himself laboring under one of those delusions to which, as has been seen, men of science are as liable as are men of other professions or modes of training? It is impossible to summon the whole profession to prove this. It is inadmissible for one to testify as to the opinions of others. There is no supreme court among experts by which conflicting views can be reconciled and an authoritative judgment pronounced. There is no power by which the testifying expert, who assumes a semi-judicial post, can be made to accept judicial responsibilities; can be made to hear counsel to instruct him on both sides of each contested point of psychology; can be made to feel that he is bound to testify to the views of his whole profession. Hence, when the trial comes on, the expert who is selected because he holds views which the great body of his profession rejects, testifies often alone, or with but slight and inadequate correction.[1] From this have arisen those outrages on public justice which eminent medical authorities have been among the first to deplore.[2] Hence it is that high medical authority has called for the abandonment of the present system of "voluntary" experts, and the establishment of a government board, as is the case in Germany.[3] Hence, also, after one conspicuous instance of failure of

[1] See *supra*, §§ 190–195.

[2] See Lettsomian Lectures on Insanity, by Forbes Winslow, M.D., D.C.L., late President of the Medical Society of London, etc. London: John Churchill, New Burlington Street. Medical Testimony and Evidence in Cases of Lunacy, being the Croonian Lectures delivered before the Royal College of Physicians, in 1853, with an essay on the conditions of mental soundness, by Thomas Mayo, M.D., F.R.S. London: John W. Parker & Son, West Strand, 1854. Marc, Die Geisteskrankheiten, in Beziehung auf die Rechtspflege, i. p. 8. And see also particularly Mittermaier's very interesting essay, "Die Stellung und Wirksamkeit der Sachverständigen in Strafverfahren," in "Archiv für Preussisches Strafrecht," Berlin, 1853. See also Regnault's elaborate disquisition, "Du degré de competence des Médecins dans les questions judicaires relatives aux alienations mentales," etc., Paris, 1828.

[3] Dr. Reese, Professor of Medical Jurisprudence and Toxicology in the University of Pennsylvania, in an article in the *American Journal of the Medical Sciences* for April, 1872, animadverts with great justice "on the impropriety of conducting a post-mortem examination, when there is a suspicion of death by poison, and where the reputation and even the life of a fellow being is involved, without the presence and oversight of the legally

justice from this cause—that in the case of Mr. Windham, in 1866—the feeling was so strong of the mischief done by crowding cases with incompetent or extravagant experts to the exclusion of the sober and authoritative, that the lord chancellor proposed in the house of lords, though without pressing the proposition to a vote, to exclude such testimony altogether in commissions of lunacy, except so far as it is based on facts within the personal knowledge of the witness.

Experts should be assessors.

§ 274. In many parts of Germany the practice obtains of requiring the medical faculty of each judicial district to appoint a special committee to whom questions of this character are referred. This committee is examined directly by the court, and gives testimony somewhat in the same way, and with the same effect, as would a common law court when reporting its judgment in a feigned issue from chancery, or as would assessors

constituted authority—the coroner. It must be evident," he continues, "to every observer, that the whole examination, in the present case (that of Mrs. E. G. Wharton) was in the hands of those who were not entirely devoid of prejudice. The first autopsy is made by Drs. Williams, Miles, and Chew, within twenty hours after death—the strong suspicion of poison influencing the minds of these gentlemen. Two weeks later, the body is exhumed and again examined, exclusively by these same persons. There is no representative or friend of the accused party invited to be present. *Surely, this was not in accordance with justice or propriety.* Were it not that the professional and social character of the parties concerned places them above suspicion, there might certainly be very grave reason for taking exception to such *ex parte* proceedings; for there might be just cause for doubt in regard to the absolute identity of the material operated upon. But still more glaring was the departure from propriety, when the body was the *second time* disinterred, and that, too, during the actual progress of the trial. . . . Certainly, none of the counsel for the defence was aware of it, until Dr. Williams one morning (during the trial) gave the unexpected detail to the court, and informed them that the new chemist, to whom the analysis of the viscera had been committed, was now ready to give a partial exhibition of his results.

"Now it seems to us that this procedure on the part of the State was unfair to the accused, to her counsel, and to the cause of juctice. We deem it contrary to all precedents in criminal jurisprudence, to take such an unfair advantage of the accused. *Why was not her counsel informed of this intention of the prosecution, so that at least one of the experts for the defence might have been present at the exhumation of the body and the subsequent analysis, and thus give at least the appearance of fairness to the procedure?* We venture to assert, without fear of contradiction, that such an *ex parte* proceeding would never have been permitted in any country in Europe; and will never again be allowed, it is hoped, in our own country."

called upon under the canon law to state, in proceedings under the law, what is the secular law of the land on the pending question. In the United States, as in England, the practice has grown up, as has been seen, of permitting each party to call such experts as he may think most likely to further his views. This practice necessarily produces collision of opinion, which greatly embarrasses court and jury, and has, as has been stated, more than any other cause, tended to weaken what should be in such cases the due influence of medical science. Take, as an illustration, the question of the existence of "moral insanity" as a distinct and substantive defence, supposed to exist independently of any lesion of the mind. The existence of such a phase of insanity is affirmed, as is seen, by one school of experts, and is denied by another school. The defendant calls, in a case where the defence of moral insanity is set up, experts of the first school. The prosecutor, in reply, calls experts of the second school. The two classes of experts flatly contradict each other as to the very possibility of the existence of such a defence. The judge, under such circumstances, puts the whole testimony aside, as relating to a question as to which medical science has no distinct rendition. The jury either follow the court, or are governed by some side issue. Of course, under our existing system, the conflict, as such, cannot be avoided. But it would be greatly lessened if the prosecution, when its proceedings are penal and conducted by the state, should, when the plea of insanity is interposed, call eminent and experienced psychological physicians, not as representatives of particular schools, but as assessors, to state what, in the pending issue, is the general view of medical science as applied to the defendant's case. In those states where the plea of insanity has to be determined as a distinct preliminary issue, this can be readily done at the outset. When, however, the practice is to permit the defendant to introduce insanity under the general plea of not guilty, then the prosecution may take this course in rebuttal. And in all cases, experts, by whomsoever called, should recollect that they are required, when asked as to the existence of any particular disease or symptom, to state not simply their own personal view, but the general sense of the profession to which they belong.

§ 275. It has already been stated that the opinions of experts, on conclusions of law, are inadmissible; and it has been further noticed that experts are not entitled to testify as such to matters not

Their testimony should not be speculative.

distinctively within the range of their specialty.[1] In this view, high medical authorities concur. Thus, Dr. Liman, in his edition of Casper (Berlin, 1871), thus speaks: "The history of art[2] is rich in individual eccentricities; and the heroes of art exhibit in the chronology of their works transitions in which it is hard to determine the point where the luxurious liberty of genius passed into fantastic eccentricity." He mentions the case of Beethoven, whose later works it puzzles the most enthusiastic disciple to reconcile with sane art; and the same observation applies to Turner, some of whose later paintings may be assigned, according to the stand-point of the critic, either to great gifts demoralized by insane self-will, or to the same great gifts elevated by genius to the last stage of transfiguration. To similar mental tendencies may be traced, according to Dr. Liman, a large part of the speculative aberrations of those who have theorized on the operations of the mind. No theorist, for instance, was more pure or honest than Bishop Berkeley, yet Bishop Berkeley declared it to be indisputably proved that all objective life is a dream. So we may rank the hypothesis of one class of psychological physicians that every body is more or less insane, and that of another, that all insane persons are responsible; and so, also, the various extravagant theories of monomania to be hereafter noticed. After all, it should never be forgotten that an abstract opinion as to insanity is of little value. Insanity, it is admitted on all sides, is incapable of definition; and to declare a person insane, therefore, is to attach to him a predicate which cannot be defined. So, also, it must be remembered that there are some admitted cases of insanity (*e. g.* "partial" insanity, or collateral monomania) which destroy neither testamentary capacity nor criminal responsibility, when the act is not the product of the particular insane delusion. Hence the real issue is, not was the party *insane*, but what was his condition of mind as to a particular act.

Examinations should be thorough.

§ 276. Special and *ex parte* interviews, it must be remembered, are very unsatisfactory and inadequate tests. Few persons with capacity enough to commit crime are wanting in capacity to feign insanity for short periods upon due notice given. Hence it is that experimental visits by

[1] Wh. on Ev. §§ 440, 505.

[2] Page 394.

experts to prisoners are so unsatisfactory; and hence, also, we may understand the slight influence on court and jury exercised in the trials of Watson and Edmunds in January, 1872, by the testimony of eminent medical gentlemen that they had had several interviews with the prisoners, and that the prisoners did not seem to have been fully conscious of the nature and moral character of their offence.[1] It would be strange if intelligent persons, such as these were, advised by able counsel, should have been ignorant, that, if they should establish an unconsciousness on their part as to the moral nature of their offence, they would make out a legal defence; and it would be still stranger if a man whose life is at stake should not at once seize upon so simple a mode of escape. Prison interviews, in fact, are peculiarly imperfect tests: *first*, because there is there little possibility of observing the prisoner in unrestrained intercourse with others; and, *secondly*, because the observer cannot, as he could in an asylum or in places where his authority is supreme, exercise any such control over the parties as will enable him to apply adequate tests. Hence it is that an expert should hesitate long before he expresses on oath an opinion based on such interviews.[2]

§ 277. Nor is the danger of deception solely on one side. Sane men may skilfully feign lunacy, but sometimes lunatics have been equally skilful in feigning themselves to be sane. Cases have not been rare in which lunatics, while hugging as they would an idol their insane delusions to their secret heart, have baffled the most experienced examiners for hours. The lunatic who, in a well-known case, succeeded, by sane answers, in defying even Erskine's consummate ability, would no doubt, had the humor seized him, been equally successful in preventing examining physicians from discovering his true state in a prison interview.

In insanity this is peculiarly requisite.

§ 278. But eminently are caution and thorough acquaintance with the patient's antecedents necessary when the question of *motive* is involved. *Motivelessness*, as will hereafter be seen,[3] is often a prime characteristic of an insane act; and psychological physicians have been accustomed,

Prior history of patient should be understood

[1] See *supra*, §§ 117–120. *Infra*, § 399.

[2] See, as to feigned insanity, *infra*, §§ 443–460.

with great propriety, to give the *motivelessness* of an act as one of the chief reasons for the insanity of an actor. But who, without thorough knowledge of the human heart, and without a specific and accurate acquaintance with the patient's character and antecedents, can declare any one of his acts motiveless? What may be a powerful motive to one person, may be no motive at all to another. Jealousy, for instance, is a motive of tremendous force, yet to detect jealousy on the one side, or to negative it on the other, requires a thorough knowledge of the party's temper and antecedents. The same remark applies to acts done to ward off from self the consequences of some secret wrong. In the case of Christiana Edmunds, for instance, in which one of the chief points of the defence was the *motivelessness* of the act, there was reason to assume that she had indulged in an illicit attachment to her family physician; that she had been suspected of poisoning his wife with chocolate; that to divert this suspicion she caused poison to be introduced into the chocolate-drops of a confectioner in the same town, which drops caused the death of a child; and that she endeavored, by anonymous letters and other means, to produce the impression that the confectioner in question sold poisoned sweets. Here was a powerful, but at the same time subtle, motive; a motive the same in character as that which impelled Dr. Webster to throw suspicion by anonymous letters on innocent parties of agency in Dr. Parkman's death; but a motive which, in Edmunds's case, was so secret in its origin and so tortuous in its working, and which was so intensified on her part by jealousy and infatuated love, that it required a full knowledge of her life and history to lay it bare. No psychological examiner, therefore, can justly pronounce on the *motivelessness* of an act without such explanation. Yet it is here that is the very gist of the defence. If a homicide is deliberately committed under the influence of jealousy, or revenge, or a desire to screen self, it is in the eye of the law murder. Supposing that there are at the time no insane delusions; supposing that there is a knowledge that the act is wrong; then neither weakness of mind, nor infatuation of passion, constitutes a defence.

III. BOOKS.

Scientific books inadmissible.

§ 279. The prevailing opinion is not only that scientific books (not consisting of mere calculations) are not

admissible in evidence on litigated issues, but that they cannot be read by counsel to the jury as part of an argument.[1] But an expert may be examined as to how far standard works sustain or conflict with his opinion.

[The hiatus between § 279 and § 303 in this edition is intentional, arising from condensation.]

[1] Wh. on Ev. § 665.

BOOK II.

MENTAL UNSOUNDNESS CONSIDERED PSYCHOLOGICALLY.

CHAPTER I.

GENERAL THEORIES.

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I. PRELIMINARY OBSERVATIONS.[1]

§ 305. The difficulties that have attended the classification of insanity have proceeded from two causes. The first is, the confusion of nomenclature, the same terms being used to describe, according to the stand-point of the observer, very distinct phenomena. The second is, the treatment of a symptom as if it were a distinct, substantive disease; and the consequent resolution of the mind into a series of distinct, independent factors, one of which may be assumed to be insane, while the others remain sane. It is the latter tendency, in fact, that has, more than all other causes, tended to lower the authority of psychology with the courts.

The mind now treated as a unit.

But the weight of present psychological opinion is to discard this process of disintegration, and to treat the mind as a unit, which, when diseased, however distinctively the disease may manifest itself, is diseased as a whole. This, in fact, is a necessary sequence of the view of the mind as an entirety which modern psychologists of all schools unite in maintaining. Assuming "mind" and "soul" to have in this view the same sense, and to represent the individual *ego*, we must view the various functions or factors—*e. g.* memory, perception, moral sense, will—not as so many *distinct* minds, but as parts or manifestations of *one* mind.

§ 306. Sir William Hamilton[2] thus reviews the literature of the topic as it existed at the time of the preparation of his lectures. "The division of the *phenomena of the mind* into the three great classes of the cognitive faculties,

Phenomena of mind divided into three

[1] In order to avoid redundancy of citation, the following works may be here referred to as bearing on the general subject: Responsibility in Mental Disease, by Dr. Henry Maudsley, M.D., N. Y. 1874; Insanity in Ancient and Modern Life, Dr. Hack Tuke, London, 1878; Nature, etc., of Insanity, Dr. Davey, Lond. 1858; The Factors of the Unsound Mind, William A. Guy, M.D., F.R.S., Lond.; Lectures on Mental Disease, W. H. O. Sankey, M.D., Lond.; Personal Responsibility of the Insane, James F. Duncan, M.D., Lond., 1877; Criminal Responsibility and Civil Capacity, by Krafft Ebing, 1874; La Folie Héréditaire, Dr. Legrand du Saulle, Paris, 1873; Etude Médico-Légale sur l'Interdiction des Aliénés, etc., Paris, 1880; Sur les Testaments Contestés pour la Cause de Folie, *id.* 1879; Jurisprudence Médico-Légale, *id.* 1874, all by the same author; The Morrisonian Lectures for 1873, by Drs. Skae and Coulston, 19 Journ. Ment. Sci. 355, 491; 20 *id.* 1, 200. Maschka's Gericht. Med. Tübingèn, 1882.

[2] Lectures on Metaphysics, Gould & Lincoln, p. 129.

the feelings or capacities of pleasure and pain, and the exertive or conative powers—I do not propose as original. It was first promulgated by Kant; and the felicity of the distribution was so apparent, that it has been long all but universally adopted in Germany by the philosophers of every school; and, what is curious, the only philosopher of any eminence by whom it has been assailed—indeed, the only philosopher of any reputation by whom it has been, in that country, rejected (Krug)—is not an opponent of Kantian philosophy, but one of its most zealous champions. To the psychologists of this country it is apparently wholly unknown. They still adhere to the old scholastic division into powers of the understanding and powers of the will; or, as it is otherwise expressed, into intellectual and active powers." It should be observed, however, that between the old English and Scotch psychologists and Kant, there is no difference, so far as concerns the question before us—the unity and entirety of the mind. They differ in the enumeration of the functions; they agree as to the unity of the substance. According to the older psychologists, the mind acts in two main ways; according to Kant and Hamilton, in three. But by neither are these functions severable from the mind. If either is diseased, the mind itself is diseased. If the mind is not diseased, its phenomena, either jointly or singly, are not diseased.[1]

classes by Kant and Sir W. Hamilton.

§ 307. Mr. Bain[2] adopts substantially the classification of Sir W. Hamilton and Kant. "The only account of mind," he says, "strictly admissible in scientific psychology consists in specifying *three properties or functions*—feeling, will or volition, and thought or intellect—through which all our experience, as well objective as subjective, is built up. This positive enumeration is what must stand for a definition."[3] . . . "*Thought*, *intellect*, intelligence, or cognition includes the powers known as perception, memory, conception, abstraction, reason, judgment, and imagination. It is analyzed, as will be seen, into three

This classification adopted by Bain.

[1] Reid, indeed, makes four apparent groups, but he is clear in stating that these are but the modes of action of the *one* mind. "By the *mind* of a man," he says, "we understand that in him which thinks, remembers, reasons, wills."

[2] Mental and Moral Science, London, 1868.

[3] For this passage in full, see *infra*, § 533.

functions, called discrimination, or consciousness of difference, similarity or consciousness of agreement, and retentiveness or memory. The mind can seldom operate exclusively in any one of these three modes. A feeling is apt to be accompanied more or less by will or thought. When we are pleased, our will is moved for continuance or increase of the pleasure (will); we at the same time discriminate and identify the pleasure, and have it impressed on the memory (thought.)" In this view of the interdependence of these functions Sir W. Hamilton emphatically concurs.

These functions not capable of distinct insanities.

§ 308. If, it may in addition be remarked, we can conceive of distinct insanities (the mind as such remaining sane) of either of the three main functions above stated; so we must conceive of distinct insanities of such subordinate functions (the mind as such still continuing sane) as these functions in chief may comprise. Thus we will hear of insane perception, insane memory, insane discrimination, etc., the mind still being supposed to be unimpaired. In fact there would be as many insanities as there are modes of mental thinking, feeling, and willing.[1]

That, however, such derangements are not distinct, independent diseases, is shown by the fact, hereafter abundantly noticed, that they occur sometimes alternately, sometimes successively, when there is true mental disease. The disease may flit, as does neuralgia, capriciously from function to function. Or, as is more usually the case, it may begin with a derangement of the perceptive powers, producing illusions and hallucinations, and end with a torpid prostration of these powers, producing senile dementia. It may, and frequently does, run through the stages of epilepsy, of illusion, of perverted domestic affections, of mania for killing, stealing, or burning, of general frenzy, and at last of exhausted dementia and fatuity. The difficulty that exists has arisen from the occasional treatment by experts of these floating symptoms of one disease as if they were independent diseases. There is but one mind to each of us, though this mind has many functions. There can be but one disease to which psychologically the term insanity may be applied, though this disease minifests itself, even in one and the same patient, in various ways.[2]

[1] See *infra*, § 533 *et seq.*

[2] See fully *infra*, § 533 *et seq.*

§ 309. It is scarcely necessary to pause now to show how generally this view has been accepted by recent medical psychologists.[1] What Morel[2] says, "il n'y a pas qu'une folie, mais diverses variétés de cette affection," is of primary importance when analysis begins. There is not a series of independent insanities; there is but one insanity exhibiting itself in various phases. Nor can we refuse to recognize the good sense with which Dr. Neumann[3] declares that all classification of insanity has proved to be artificial and, therefore, unsatisfactory; and that no true progress in this science can be credited, until all classification is thrown overboard, and there is recognized but one generic type of mental disturbance; and further, that "true medical diagnosis does not need these artificial divisions, and for forensic psychology they have been pernicious. The tendency of alienists to confuse or confound the judge by technical nomenclature (monomania, pyromania, etc.), instead of by psychological analysis elucidating the concrete case, springs from a merely artificial systematization, and *judicial psychology* will for the first time assume its proper place at the forum when it is emancipated from the fetters of the schools." These views Dr. Liman entirely adopts.[4] "Mental health," he tells us, "is the antithesis of mental disease; and the sole duty imposed upon us is the exposition and development of the concrete individual case as such, which is now so easily lost sight of in the division of mental disease into numberless species and varieties."[5]

So held by later psychologists.

§ 310. Remembering, therefore, that the different forms of insanity described by psychologists are but phases of one disease, it may be of value to notice some of the modes in which these forms have been classified.[6]

One of the most authoritative of these classifications is that reported by an international congress of psychological experts assembled in Paris in 1867.[7] It is as follows:—

Classification of experts in Paris, 1867.

[1] See more fully *infra*, §§ 567–572.

[2] Traité de la Méd. Lég., Paris, 1866, § iv.

[3] Lehrbuch der Psychiatrie, Erlangen, 1859, pp. 167–237.

[4] Liman's Casper, 1871, p. 550.

[5] See more fully *infra*, § 567, and also *supra*, §§ 163–189.

[6] See, for Dr. Buckinel's classification, 19 Journ. Ment. Sci. 574.

[7] Hammond, Diseases of Nervous System, N. Y., 1871, p. 337.

I. Simple insanity, embracing mania, melancholia, and monomania (thus negativing the claims of monomania to be considered a distinct disease), floating insanity, moral insanity (whose independent existence is also thus negatived), and dementia consequent on the above types.
II. Epileptic insanity.
III. Paralytic insanity, which is treated as a distinct disease.
IV. Senile dementia.
V. Organic dementia, which is that supposed to arise from some cerebral lesion.
VI. Idiocy.
VII. Cretinism.

This analysis, however it may serve as a convenient enumeration, is destitute of logical value. It applies exclusively neither the test of causation, nor of symptom, nor order of development, but is purely arbitrary, in making, in the first head, symptom the test, and then grouping together symptoms the most incongruous; resting the second, third, fourth, and fifth heads on superinduced physical causes, and the sixth and seventh on causes which are congenital.

Dr. Maudsley.

§ 311. Dr. Maudsley[1] adopts the following:—

I. Affective or pathetic insanity.
  1. Maniacal perversion of the effective life. *Mania sine delirio.*
  2. Melancholic depression without delusion. Simple melancholia.
  3. Moral alienation proper. Approaching this, but not reaching the degree of positive insanity, is the insane temperament.
II. Ideational insanity.
  1. General.
    a. Mania.
    b. Melancholia, { acute, chronic.
  2. Partial.
    a. Monomania.
    b. Melancholia.
  3. Dementia, { primary, secondary.
  4. General paralysis.
  5. Imbecility.

As to this analysis, it is to be observed simply, that, if it makes the "effective life," independent of the mind, capable of being diseased when the mind is undiseased, it runs counter both to psychological and to juridical science. If it does not make this assumption, it is, as an analysis, insensible and illogical.

[1] Physiology and Pathology of the Mind, London, 1867.

§ 312. Dr. Hammond gives the following, which, as a classification of symptoms, is of much value:— Dr. Hammond.

I. Perceptional insanity, "characterized by the tendency to the formation of erroneous perception either from false impressions of real objects (illusions) or from no external excitation whatever (hallucinations)."

II. Intellectual insanity, "characterized by the existence of delusions." Subsequently it is said, as explanatory of this distinction, that "illusions and hallucinations may exist, *and the individual be perfectly sensible that they are not realities. In such cases the intellect is not involved. But, if he accepts his false perceptions as facts, his intellect participates, and he has delusions. A delusion is, therefore, a false belief.*" The objection to this is that the terms *illusion* and *delusion* are used convertibly by most psychologists; and that hallucination is not a symptom of insanity unless the unreal image is not merely the creation of a diseased brain, but is believed to be real.

III. Emotional insanity.

IV. Volitional insanity.

V. Mania.

VI. General paralysis.

VII. Idiocy and dementia.

§ 313. The analysis of Casper and Liman is both philosophical and simple. It is as follows:— Analysis of Casper and Liman.

I. Insanity in its progress, including despondency, melancholy, excitation, mania, as among the various forms in which this progress exhibits itself.

II. Insanity in its results, including imbecility, dementia, and fatuity.

§ 314. "The various diseases included in the general term insanity, or mental derangement," says Dr. Ray, "may be conveniently arranged under two divisions, founded on two very different conditions of the brain; the first being a want of its ordinary development, and the second, some lesion of its structure subsequent to its development. In the former of these divisions, we have idiocy and imbecility, differing from each other only in degree. The various affections embraced in the latter general division may be arranged under two subdivisions, mania and dementia, distinguished by the contrast they present in the energy and tone of the mental manifestations. Mania is characterized by unnatural exaltation or depression of the faculties, and may be confined to the intellectual or to the effective powers, or it may involve them both, and these powers may be generally or partially deranged. Dementia depends on a more or less complete enfeeblement of the faculties, and may be consecutive to injury of Of Dr. Ray.

the brain, to mania, or to some other disease; or it may be connected with the decay of old age. These divisions will be more conveniently exhibited in the following tabular view:—

INSANITY.	Defective development of the faculties.	Idiocy.	1. Resulting from congenital defect. 2. Resulting from an obstacle to the development of the faculties, supervening in infancy.
		Imbecility.	1. Resulting from congenital defect. 2. Resulting from an obstacle to the development of the faculties, supervening in infancy.
	Lesion of the faculties subsequent to their development.	Mania.	Intellectual, 1. General. 2. Partial. Affective, 1. General. 2. Partial.
		Dementia.	1. Consecutive to mania, or injuries of the brain. 2. Senile, peculiar to old age."[1]

§ 315. The following classification of Flemming,[2] while less simple, is very valuable both for the delicate precision of its analysis, and for the important aid it affords to the nomenclature of forensic psychology:—

Of Flemming.

I. INFIRMITAS. (Geistesschwäche). Imbecility, the characteristic being the diminution in psychical power.

1st. As to origin.

(1) *Primaria seu congenita.* (Syn. *Idiotismus.*) A defective development perceptible either at birth or infancy.

(2) *E morbo*, arising from wounds on the head, brain or nervous fevers, or epilepsy.

(3) *Senilis*, arising from decrease in vitality in the extreme stages of old age.

2d. As to extent.

(1) *Infirmitas adstricta.* Limited imbecility, the characteristic being diminution of particular organic powers.

(*a*) *Dysmenia.* Weakness of memory, the characteristic being the feebleness of the reproductive power of the perceptive faculty, and the symptoms, an inability to remember things either recent or remote, distinctly or at all.

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[1] Ray on Insanity, 71.

[2] Psychiatrisches Journal, Bd. I. Hft. 1, p. 112.

(*b*) *Infirmitas adstricta surdo-mutorum.* Imbecility of the deaf and dumb.

(*c*) *Infirmitas adstricta cæcorum.* Imbecility of the blind.

(2) *Infirmitas sparsa.* General weakness of mind, the characteristic being the absolute or relative weakness of all the mental and moral functions, and the symptoms, obtuseness and feebleness of the perceptive and attentive powers; feebleness of comprehension, of ratiocination, of imagination, of memory, in a variety of gradations.

II. VESANIA (Geistes verwirrung). Mental confusion, the characteristic being a depravity (depravation) of the psychical powers arising from excess or perversion.

1st. *Vesania dysthymodes*, or *dysthymia*, disorder of temperament, the characteristic being the depravity (*depravation*) of the psychical powers connected with an overpowering disturbance of the temperament. Symptoms: an anomalous condition of the sensibility, the mental tone, the inclinations, and the impulses. The consequent deliria are the invariable effect of the dysthymia, and depend upon the prevailing feeling or sentiment.

(1) *Dysthymia transitoria seu subita.* Sudden dysthymia, the characteristic being the suddenness and rapidity of its approach. Symptoms: irritability, proneness to agitation, irascibility, excessive disgust, fear of death, extreme timidity, despair of happiness. It occurs frequently in the *Stadium prodromorum* of cerebral affections and nervous fevers, or of epilepsy and the cognate complaints; and is sometimes, though more rarely, accompanied by the sudden suicidal impulse. It should be observed that *dysthymia remittens* sinks in the remission into the mere *dysaethesis*.

(2) *Dysthymia adstricta*, or partial dysthymia, the characteristic being an anomalous condition of particular states of feeling, inclinations, and impulses.

(*a*) *Atra* (the *Melancholia Lypemonia* of Esquirol), or gloomy *Dysthymia*, the characteristic being sadness, fear, dread, suspicion, malevolence, homesickness (*nostalgia*), and the wildness and ferocity of the intoxicated. (*Ferocitas et morositas ebriosorum.*)

(*b*) *Dysthymia candida*, cheerful *Dysthymia* (*Melancholia hilaris*, *Chœromanie Chambeyron*), the characteristics being hilarity, recklessness of manner, raillery, proneness to see all things in the most vivacious light.

(*c*) *Dysthymia mutabilis*, variable *Dysthymia*, the characteristic being vacillation between the two foregoing forms.

(3) *Dysthymia sparsa* (*apathica*), general Dysthymia (*Melancholia Attonita*). The characteristics being apparent obtuseness, dull, heavy reveries and abstractions, prevalence of an indistinct sensation of discomfort, apathy to all extraneous impressions.

2d. *Vesania Annoetos*, or *Anoesia*. Disturbance of the understanding. The characteristics being the depravity (depravation) of the psychical powers, with a controlling anomalousness of the intellectual faculties. Symptoms, deliria of various kinds, with manifestations of Dysthymia, which, however, are merely subordinate.

(1) *Anoesia Transitoria*, or *Subita*. Sudden Anoesia. The characteristics being unexpected appearance and rapid subsidence.

(*a*) *Anoesia e febre*. Febrile delirium.

(*b*) *Anoesia e potu nimio* (*ebrietas*). Drunkenness.

(*c*) *Anoesia ex affectu*, madness caused by agitation of mind.

(*d*) *Anoesia semisomnis*. Confusion of mind in sleep. Sleep-drunkenness.

(*e*) *Anoesia Somnambula*, or *Spastica;* Somnambulism.

(2) *Anoesia continua*, *chronic Anoesia*.

(3) *Anoesia remittens*. Remittent Anoesia.

(4) *Anoesia adstricta*, partial Anoesia or Lunacy. The characteristics being delirium in particular intellectual departments.

(*a*) *Anoesia ad sensationes*. Hallucinations (deliria of the senses). Var. *a fallacia sensuum et hallucinatio ebriosorum* (derangement of the senses consequent on excess of drinking).

(*b*) *Anoesia ad cogitationes*, eccentricity, fixed insane ideas.

(5) *Anoesia sparsa*. General Anoesia or Innacy, the characteristics being deliria in every department of the intellectual faculties. Var. *a Anoesia potatorum* (*Delirium tremens*).

3d. *Vesania maniaca sue Mania*. The characteristic being a depravity (depravation) of the psychical functions, with a concurrent anomalousness of the emotional and intellectual faculties. The symptoms are a violent and perverse temper, inclinations and impulses, with violent deliria, which mutually sustain and aggravate each other.

(1) *Mania transitoria subita*, sudden mania, the characteristic being a sudden breaking out of mania without perceptible premonitory stages, and without previous *Dysthymia* or *Anoesia;* generally a crisis in sleep, or transition to the second class.

(*a*) *Mania subita a febre* (*Delirium encephaliticum*), sudden delirium, with feverish symptoms of the brain and nerves.

(*b*) *Mania subita a potu nimio*, arising from and during intoxication.

(*c*) *Mania subita ex affectu*, mania caused by excessive agitation of the affections.

(*d*) *Mania subita e partu*, mania connected with parturition.

(*e*) *Mania subito e morbo occulto* (vulgo), *Amentia occulta*, which also includes the previous species.

(2) *Mania continua*, permanent mania.

(3) *Mania remittens*, Remittent mania. (Remark—Remittent mania in remission turns into Anoesia, in some cases immediately into Dysthymia.)

(4) *Mania adstricta seu instinctiva*. Moral Insanity (*Mania sine delirio* of Pinel; *Monomanie instinctive* of Marc; Mania affectiva; Folie raisonante); the characteristics being insanity, apparently confined to specific morbid impulses. This class is almost always connected with the symptoms of *Mania transitoria seu subita*.

(5) *Mania sparsa*. General mania is the characteristic, being a depravity (depravation) of both the moral and intellectual powers.

§ 316. To Ellinger[1] we are indebted for the following:— Ellinger.

I. Diseases of the affections, when the affections, sentiments, and desires are preponderatingly alienated, while the intellectual faculties are affected in an inferior or at least a secondary degree.

(*a*) Melancholy, the prevalent type being sadness, depression, fear, dread, and despair.

(*b*) Frenzy, the prevalent type being mirth, mischievousness, anger.

(*c*) Volatility (Launenhaftigkeit). Alternation between the two last-mentioned phases.

II. Delirium, the sentiments and intellectual faculties being equally affected, and both the subjective and objective relations alike distorted.

(*a*) (*b*) (*c*) Characterized by melancholy, frenzy, and the alternation of the two.

III. Diseases of the intellect, where the affections take subordinate part and the intellect is mainly disordered.

(*a*) Partial.

(*b*) General.

(*c*) Debility, including idiocy and imbecility.

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[1] Ueber die antropologischen Momente der Zurechnungs fähigkeit. Ludwigsburg, 1846.

§ 317. Without attempting a formal or scientific analysis, it is now proposed to consider the several points in which psychology comes in contact with the law of the land.

Three prominent theories as to cause of insanity.

§ 318. To those who have examined that portion of the preceding pages which treats of the legal relations of mental unsoundness, it will be obvious that no hypothesis can be constructed which will meet with exactness every possible future case. No general definition has, therefore, been attempted, and it is sufficient at present to notice the three prominent hypotheses by which the *cause*, rather than the *nature*, of mental unsoundness has been explained. This examination is here made the more thorough, from the fact that it is upon the result of this inquiry that the philosophy of the common law doctrine of insanity must depend.

II. PSYCHICAL THEORY.

The soul the origin of the disease.

§ 319. This is based on the assumption that the primitive source of these diseases is in the soul itself, and that the soul is that which originally suffers, and imparts, when there is insanity, its malady to the body.[1]

III. SOMATIC THEORY.

Disturbances of the soul produced by bodily abnormities.

§ 320. The *somatic theory* takes for granted that the soul itself, as such, is incapable of originating a disease, but that the occasion of every affection of the mind is to be found in some abnormity of bodily development, and that aberrations of mind are nothing more than disturbances of some functions of the soul produced by bodily abnormities. This theory resolves itself into various subdivisions. One party assumes, that, while every mental disease is to be deduced from bodily causes, it is still to be treated as a self-existent disease; while others maintain that there can be no such thing as a diseased state of the mind, and that what we usually designate as such is

[1] See an exposition of this in Dr. Henry Monro's "Remarks on Insanity, its Nature and Treatment," London, 1850. I also call particular attention to President Noah Porter's admirable work on the Human Intellect, of recent (1872) psychological treatises the most judicious as well as the most exact.

nothing more than a symptom of some bodily disorder.[1] The somatic theory, so far as it involves phrenology, is examined with singular accuracy and thoroughness by Sir William Hamilton, in the appendix to the first volume of his Lectures on Metaphysics.[2] He first discusses the phrenological doctrine of the cerebellum, and by a series of experiments explodes the phrenological hypothesis. After having weighed, with peculiar care, and under precautions which exclude all the known possibilities of mistake, over one thousand brains of fifty different species of animals, he shows:—

(1) The cerebella of animals generally are not, during a certain period subsequent to birth, less in proportion to the brain proper than in adults.

(2) In no species of animal has the female a proportionally smaller cerebellum than the male; while in most species, "and this according to a certain law, she has a considerably larger."

(3) So far from being the case as is alleged by phrenologists, that in impuberal animals the cerebellum, in proportion to the brain proper, is greatly less than in adults, the contradictory is shown.

(4) The phrenological assertion, that "the proportion of the cerebellum to the brain proper in different species is in proportion to the energy of the phrenological function attributed to it," is equally groundless.

We add one or two distinct points made by this most eminent and most reliable of modern psychologists: "I shall, however, give you the sample of another general fact. The organ of veneration rises in the middle on the coronal surface of the head. Women, it is universally admitted, manifest religious feeling more strongly and generally than men, and the phrenologists accordingly assert that the female cranium is higher in proportion in that region than

[1] A very ingenious though unsound defence of the somatic theory will be found in Mr. M. B. Sampson's "Criminal Jurisprudence considered in relation to Cerebral Organization," London, 1843. Hobbes's famous theory drifts in the same direction. The result of this would be to make all restraint an injustice. So far as concerns phrenology, the reader is particularly referred to Sir William Hamilton's Lectures on Metaphysics, pp. 650–658, where the phrenological theory is thoroughly demolished. For a copious and elaborate history of materialism, coupled with some ingenious speculations on its later developments, see *Geschichte des Materialmus, und Kritik seiner Bedeutung in der Gegenwart*, von Friedrich Albert Lange, Iserlohn, 1866.

[2] Gould & Lincoln, 1859.

the male. This I found to be the very reverse of truth, by a comparative average of nearly two hundred skulls of either sex. In man, the female encephalos is considerably smaller than that of the male, and in shape the crania of the sexes are different. By what dimension is the female skull less than the male? The female skull is longer, it is nearly as broad, but it is much lower than the male. This is only one of several curious sexual differences of the head.

"I do not know whether it be worth while mentioning, that, by a comparison of all the crania of murderers preserved in the anatomical museum of this university, with nearly two hundred ordinary skulls indifferently taken, I found that these criminals exhibited a development of the phrenological organs of destructiveness and other evil propensities smaller, and a development of the higher moral and intellectual qualities larger, than the average. Nay, more, the same results were obtained when the murderers' skulls were compared, not merely with common average, but with the individual crania of Robert Bruce, George Buchanan, and Dr. David Gregory."

Then, as to the frontal sinuses:—

"I omit all notice of many other decisive facts subversive of the hypothesis in question; but I cannot leave the subject without alluding to one, which disproves at one blow a multitude of organs, affords a significant example of the accuracy of statement, and shows how easily manifestation can, by the phrenologists, be accommodated to any development, real or supposed. I refer to the frontal sinuses. These are cavities between the tables of the frontal bone, in consequence of a divergence from each other. They are found in all puberal crania; and are of variable and (from without) wholly inappreciable exent and depth. . . . Now the phrenologists have, fortunately or unfortunately, concentrated the whole of their very smallest organs over the region of the sinus. How is it possible, he asks, that eye or finger can detect minute degrees of cerebral development beyond these invisible, unknown cavities, of various extent? The phrenologists were not acquainted with the anatomy of the part. Gall asserted that the sinus was often absent in men; seldom or never found in women. Spurzheim declares that the frontal sinuses are found only in old persons, or after chronic insanity."

In reply to this, Sir W. Hamilton shows, after an inspection of several hundred crania, that no skull is without a sinus.

Behind the spacious caverns, he then goes on to show, in utter ignorance of the extent, frequency, and even of the existence of this impediment, the phrenologists have placed not *one large*, but *seventeen* of their *smallest* organs.

By concentrating all their organs of the smallest size within the limits of the sinus, they have, in the first place, put the organs whose range of development is least behind an obstacle whose range of development is greatest.

In the second place, they have at once thrown one-half of their whole organology beyond the range of possible discovery and possible proof.

In the third place, by thus evincing that their observations on that one-half had been only illusive fancies, they have furnished a criterion of the credit that may be accorded to their observations in relation to the other; they have shown, in this as in other portions of their doctrine, that *manifestation* and *development* are quantities, which (be they what they may) can, on their doctrine, always be brought to an equation.

Fourthly, as if determined to transcend themselves, and find "a lower deep beneath the lowest," they have placed the least of their least organs at the very point where this great obstacle is most potent. The sinus is almost always deepest towards the inner angle of the eyebrows, and it is just there that the minute organs of size, configuration, weight, resistance, etc., are said to be.

In the fifth place, they have been quite as unfortunate in the location of the other minute organs. These they arrange in a series along the upper edge of the orbit, where, independently of the sinus, the bone varies more in thickness than in any other part of the skull. Here have they packed those organs more closely than peas in a pod, which they scarcely exceed in size. If these pretended organs actually and severally protruded from the brain (which they do not), if there were no sinus intervening (as there is), if they were under the thinnest part of the cranium (instead of the thickest), still these petty organs could not reveal themselves by showing any elevation, and especially any sudden elevation of superincumbent bone. They might possibly indent the inner surface, and cause a slight attenuation of the bone—and this is all they

could do. The glands of Pacchioni, as they are improperly called, which rise on the coronal surface of the encephalos, and are often even larger than the bodies in question, though they attenuate to the thinnest, never elevate in the slightest the external body plate.

The thoroughness of the material on which Sir W. Hamilton acted is shown by the fact that all the crania in the public anatomical museum at Edinburgh were inspected by him. He subsequently obtained access to fifty crania, with their supposed developments marked by Spurzheim's own hand, which had passed to the Royal Museum of Natural History at Edinburgh. By a tabular view he shows that a large proportion of the supposed "organs" were covered or crowded by the frontal sinus.

No lesion of the brain due to insanity.

§ 321. According to the late Dr. Bell, of the McLean Asylum, Somerville, Massachusetts, autopsies of the insane generally present no material lesion of the brain; "changes, indeed, there are to be seen, but only those that may have occurred in articulo-mortis;"[1] and it was stated by Dr. Bell, in support of this opinion, that "the late Dr. Waldo J. Burnett, of Boston, one of the most accomplished microscopists in the country, had made examinations of persons who had died in a state of chronic insanity, but had been unable to discover any change of structure whatever, or any sign to indicate that it did not belong to an individual whose mind was unaffected."[2]

Insanity in women does not always produce organic cerebral change.

§ 322. Bearing on this point are some interesting observations of Dr. Storer, in his late work on "The Causation, Course, and Treatment of Reflex Insanity in Women."[3] This very experienced observer, in vindicating the position that "many cases of mental disturbance in women are of reflex character, arising from pelvic irritation, and that local treatment would prove of advantage in very many more cases than those for which as yet it had ever been employed," shows that in a great majority of cases insanity is not accompanied with organic cerebral change. That in women insanity is generally peripheral and reflex, dependent upon functional or organic disturbance of the reproductive system, he shows by the admissions of psychologists that there can be cerebral diseases

[1] Am. Journ. of Insan. x. p. 73. Cited in Stover, *ut infra*, p. 47.

[2] Ibid.

[3] Boston: Lee & Shepard, 1871.

without insanity and insanity without cerebral disease; by the result of autopsies; by analogies from other sympathetic results; by cases on record both psychical and obstetrical; by the analogies of the time of development; by the effect of treatment; by the theory of ultimate causation; by the indications of prevention; and by the indications of rational treatment.

§ 323. So far as concerns autopsies, it is stated by Dr. Storer that the results show that "insanity may exist without structural changes of the brain, and that structural changes in the brain may exist without insanity." He cites the late Dr. Bell, of the Somerville Asylum, whose statement has been just given, that the autopsies of the insane generally present no lesion of the brain; and that the changes noticeable may be traceable solely to death; and he quotes Dr. Bucknil[1] as maintaining that "the brains of the insane appear to be certainly not more liable than those of others to various incidental affections. . . . It seemed reasonable to expect that by the aid of the microscope one would be able to ascertain whether any exudation or addition to the stroma of the brain, or any change in size, shape, or proportional number of its cells, takes place; and in the indurated brain of chronic insanity, whether that finely fibrillated exudate, which has been described by some writers, actually exists; also, whether, in extreme atrophy of the brain, any proportion exists in the diminution or degeneration in the form of the cells or tubes. *In none of these points of inquiry have we been able to attain the slightest success.*" After further citations, Dr. Storer proceeds to say that "it is thus seen not merely that there is no direct correspondence between the exterior of the skull and mental integrity, any more than between the exterior of the skull and the shape and consistence of its contents." And in cases of insanity among women, it is shown by this eminent practitioner that the causes of such insanity are largely to be found in derangement of the reproductive organs, to be met by specific local treatment. Yet, at the same time, it is stated that the indulgences allowed to the mind when in a healthy state have a large share in determining the character of its passions when diseased.

No correspondence between exterior of skull and sanity.

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§ 324. The conflict on this subject may be exhibited by a single illustration.[1] *Aphasia*, or the loss of speech, is a well-known disease, sometimes caused by defect of memory, sometimes by apparent incapacity of the motor powers. As belonging to the former of these classes may be mentioned the case of the wife of the Rev. William Jay, hereafter to be noticed;[2] and that of a person reported in 1871 by Dr. J. G. Glover to the Clinical Society of London. In the latter case, the patient was without any trace of cerebral disease, with no hemiplegia, "with no difference in the sensation of the two sides, with ability to walk, write, and to protrude the tongue straight; was yet unable, when shown a familiar object, to recall the proper name for it, but would designate a book before him as 'good,' 'house,' 'butter;' called a watch 'tempus fugit,' though able to write the word 'watch' correctly." A similar perversion of words pervaded his whole range of vocal expression. Dr. Rush, in his chapter on "Derangement of the Memory," speaks (1) of "oblivion of names and vocables of all kinds;" (2) of "substitution" of words, as in the case of a gentleman "who, in calling for a knife, asked for a bushel of wheat;" (3) of "an oblivion of the names of substances in a vernacular language, and a facility of calling them by their proper names in a dead or foreign language," of which, in addition to the cases given by Dr. Rush, may be mentioned that of the servant girl referred to by Sir W. Hamilton, who repeated, when in a fever, a Latin address she had heard her master recite when sweeping his room; (4) an "oblivion of all foreign and acquired languages, and a recollection only of vernacular languages;" (5) "an oblivion of the *sound* of words, but not of the letters which compose them."

Conflict on subject illustrated by *aphasia*.

§ 325. *Aphasia* consists of a confusion of the idea of language as such, and is to be distinguished from *aphonia*, which is simply loss of voice; and from paralysis which affects the tongue or muscles of articulation. The question as to the physical origin of aphasia was first agitated by Gall, who announced that the faculty of language was seated in those portions of the brain which rest on the hinder part of the super-orbital

This said to be of physical origin.

[1] As to aphasia, see articles in 2 Brain, 203, 323; 35 Am. Journ. Ins., an article entitled *Aphasia or Aphasic Insanity?*; 23 Journ. Ment. Sci. 403; 21 id. 406.

[2] *Infra*, § 692.

plate; and he associated a protrusion of the eyes with this faculty, giving great facility in learning and retaining words. By Bouillard, aphasia was declared to be in many cases associated with a diseased or mutilated state of the anterior lobes of the brain; but Dr. Hammond,[1] after a careful survey of the reported cases, says "that there can be no doubt that Bouillard is wrong in claiming that injury of the material lobes is necessarily followed by some derangement in the faculty of speech." Dr. Hammond, after reviewing the theories of Dax and Broca, declares,[2] (1) "that the organ of language is situated in both hemispheres, and in that part which is nourished by the middle cerebral artery;" (2) "that while the more frequent occurrence of right hemiplegia, in connection with aphasia, is in great part the result of the anatomical arrangement of the arteries which favors embolism on that side, there is strong evidence to show that the left side of the brain is more intimately connected with the faculty of speech than the right." But even among those advocating a material site for the organ of speech, these conclusions are not accepted as absolute. Thus Schroeder van der Kölk, after a series of experiments, tells us that language unquestionably takes its origin from the "corpora olivaria."

§ 326. On the other hand, we have from a distinguished practical physician an elaborate treatise, published in 1870, to show that speech has no material centre; that all attempts to give it anything but a psychical origin have failed; that aphasia may and does exist without either right hemiplegia, or lesion of the third left anterior convolution, or any of the other symptoms suggested by materialistic psychologists; and that these lesions may exist without having any effect on speech.[3]

Objections to this view.

Another objection to the exclusively materialistic view lies in the impossibility of reconciling the indelibility of the records of memory with the acknowledged fact of the constant efflux and change of the material substance of the human frame. Old persons, as is well known, recall with peculiar vividness the impressions of infancy. Between infancy and old age, however, the matter of the brain, like that of the rest of the body, has not merely grown and

[1] Diseases of the Nervous System, New York, 1871, p. 183.

[2] Ibid. p. 202.

[3] On Asphasia or Loss of Speech and the Localization of Language, by Frederick Bateman, M.D., Physician to the Norfolk and Norwich Hospital. London: Churchill, 1870.

increased, but has been subjected to a series of evolutions by which its substance has been constantly changed. If memory is the simple inspection of the inscriptions on a cerebral tablet, then, as the tablet changes, memory must fade. But the fact is that memory is often intensified in proportion to the extent and number of cerebral changes and evolutions. Memory must be, therefore, something else than an attribute of matter, and, if so with memory, so, *a fortiori*, with the other functions of the intellect.[1]

Materialistic hypothesis would avoid personal responsibility.

§ 327. Dr. Maudsley, the most eminent English representative of this school, admits that the evidence on which the materialistic hypothesis rests is not sufficient to sustain it. In his work on the Physiology and Pathology of the Mind,[2] he explains this by saying, that, "where the subtlety of nature so far exceeds the subtlety of human investigation, to conclude from the non-appearance of change to the non-existence thereof would be just as if the blind man were to maintain that there were no colors, or the deaf man to assert that there was no sound. Matter and force are necessary coexistents, and mutually suppose one another in human thought; and to speak of change in one is of necessity to imply change in the other. . . . And there are numerous facts available to prove that the most serious modifications in the constitution of nerve element may take place without any knowledge of them otherwise than by the correlative change of energy." But such reasoning as this cannot be accepted in law. A plaintiff brings an action of ejectment, and, without producing evidence to support his claim, declares (1) that it is insusceptible of proof, (2) that to dispute it is as just as it would "be for the blind man to maintain that there were no colors, or the deaf man to assert that there was no sound." But if the claim is one as to which there is no "knowledge," and to test which the human mind is impotent, then it is one which ought not to be brought. For materialism is the plaintiff in a great suit on which great results, religious and judicial, depend. If it be true, all our ordinary notions of penal responsibility will be upset. Thus Dr. Maudsley adopts at the head of his seventh chapter, which discusses volition, Spinoza's statement that "it is a delusion on the part of mankind to fancy themselves free agents. . . . The

[1] See also *infra*, § 329.

[2] London, 1867, p. 367.

idea that men are in possession of their liberty arises from the fact that they are ignorant of the cause for their actions." This Dr. Maudsley expands so as to make it appear that all acts are the result of material necessity. The law, on the other hand, holds that all acts, so far as concerns the sane, are free. When Dr. Maudsley assails this settled position, we cannot allow ourselves to be convinced, when we call for proof, by being told that we are like blind and deaf men who undertake to judge of color and sound.

§ 328. Dr. Maudsley, however, is careful to disclaim any necessary relation between materialism and the doctrines of the immortality and future responsibility of the soul. "Whosoever," he writes,[1] "believes sincerely in the doctrine of the resurrection of the body, as taught by the Apostle Paul, which all Christians profess to do, must surely have some difficulty in conceiving the immortality of the soul apart from that of the body; for if the apostle's preaching and the Christian's faith be not in vain, and the body do rise again, then it may be presumed that the soul and it will share a common immortality, as they have shared a common mortality. So far, then, from materialism being the negation of immortality, the greatest of the apostles earnestly preached materialism as essential to the life which is to come. There is little or less justification for saying that materialism involves of necessity the denial of free will. The facts on which the doctrine of free will are based are the same facts of observation, whether spiritualism or materialism be the accepted faith, and the question of their interpretation is not essentially connected with the one or the other faith; the spiritualist may consistently deny, and the materialist consistently advocate, free will. In like manner, the belief in the existence of God is nowise inconsistent with the most extreme materialism. . . . The spiritualist may deny God the power to make matter think, but the materialist need not deny the existence of God because he holds that matter may be capable of thought."[2]

Though it is claimed not to affect future responsibility.

[1] Body and Mind, London, 1870, p. 123.

[2] See also a curious essay on this topic, by Mr. I. B. Dalgairns, in the Cotemporary Review for December, 1870; and see *infra*, §§ 332–335.

IV. INTERMEDIATE THEORY.

1. *Its basis.*

§ 329. This view attributes to the body and the soul alike originative influence, in the growth of mental diseases.[1] The theory is

[1] See a very capable sketch of these theories in Schürmayer, Gerichtliche Medicin, § 521, from which this analysis is taken; and see also particularly Dr. Rush's examination of the same points in his treatise on the Mind, pp. 12, 13, 14, and where that eminent authority (p. 16) localizes madness in the blood-vessels of the brain.

Feuchtersleben, in his celebrated work (Principles of Medical Psychology, translated by Evans Lloyd, printed by the Sydenham Society, London, 1847), may be considered as adopting the intermediate theory. Insanity, he tells us, is not either a bodily or a mental disease, being a disturbed reciprocal relation of mind and body. Dr. Jamieson (Lectures on the Med. Jur. of Insanity, by Robert Jamieson, M.D.) takes this same view.

The religious aspects of the question are well discussed in the *London Christian Observer*, vol. 29, p. 265, and by the Rev. Dr. Jones, in "Man, Moral and Physical," Phil. 1860.

Sir Benjamin Brodie, in an authoritative essay (Psychological Inquiries, etc., London, 1854), gives the following conclusive objections to the phrenological phase of the somatic theory: "Now there are two simple anatomical facts which the founders of this system have overlooked, or with which they are probably unacquainted, and which of themselves afford a sufficient contradiction of it.

"1st. They refer the mere animal propensities chiefly to the posterior lobes, and the intellectual faculties to the anterior lobes of the cerebrum. But the truth is, that the posterior lobes exist only in the human brain, and in that of some of the tribes of monkeys, and are absolutely wanting in quadrupeds. Of this there is no more doubt than there is of any other of the best established facts in anatomy; so that, if phrenology be true, the marked distinction between man on the one hand, and a cat, or a horse, or a sheep on the other, ought to be, that the former has the animal propensities developed to their fullest extent, and that these are deficient in the latter.

"2dly. Birds have various propensities and faculties in common with us, and in the writings of phrenologists many of their illustrations are derived from this class of vertebral animals. But the structure of the bird's brain is essentially different, not only from that of the human brain, but from that of the brain of all mammalia. In order that I may make this plain, you must excuse me if I repeat what I said on the subject formerly. In the mammalia the name of the *corpus striatum* has been given to each of two organs of a small size compared with that of the entire brain, distinguished by a peculiar disposition of the gray and the fibrous or medullary substance of which they are composed, and placed under the entire mass of the hemispheres of the cerebrum. In the bird's brain what appears to a superficial observer to correspond to these hemispheres is found, on a more minute examination, to be apparently the *corpora striata* developed to an enormous size; that which really corresponds to the cerebral hemi-

the one best sustained by modern induction, and is that which is most consistent, as will presently be seen, with the Christian standard.

Body and soul alike the origin of disease.

Independently of the pathological difficulties in the way of the somatic theory, psychological research testifies strongly against it.[1] The mental and moral functions are the immediate products of an independent sphere of organism, and not to be explained by anything lying outside of that sphere. The brain and the nerves have only the physical part of perception and motion, and to some extent the regulation of the functions, to perform; but the soul cannot but be considered as distinct from this activity of the nerves. The somatic theory, which confounds the two, will never be able to make a satisfactory distinction between palsy and imbecility, between convulsions and ravings, between sensuous hallucinations and insanity.[2] This theory, therefore, fails in affording support to any practical system of therapeutics.

spheres being merely a thin layer expanded over their upper surface, and presenting no appearance of convolutions. It is plain, then, that there can be no phrenological organs in the bird's brain, corresponding to those which are said to exist in the human brain, or in that of other mammalia. Yet birds are as pugnacious and destructive, as much attached to the localities in which they reside, as any individual among us."

In his interesting work on Criminal Jurisprudence, Mr. Sampson adopts the views of the author of "Vestiges of the Natural History of Creation," and ascribes every criminal action to some abnormal or morbid condition of the cerebral organization. This fundamental proposition is, that "every manifestation of the mind depends upon the confirmation and health of its material instrument, the brain; and, as it is not the function of a sound and healthy brain to give rise to any other than healthy manifestations, so no error of judgment can ever arise but as the result of a defective condition of that organ." He proceeds to say:—

"Mr. Hurlbut, an eminent counsellor, and one of the supreme judges in the state of New York, in his 'Essays on Human Rights and Political Guarantees,' a work which is well worthy of perusal, promulgates the same doctrine, which, on the other hand, is very ably controverted by Dr. Hood—'Suggestions for the further provision of Criminal Lunatics, by Charles Hood, M.D. London, 1854. pp. 126, 127.'"

[1] *Supra*, §§ 320–327. Siebold, Lehrbuch der Gericht. Med., Berlin, 1847, § 194; L. Krahmer, Handbuch der Gericht. Med., Halle, C. A. Schwetschke, 1851, § 126; Heinroth, Syst. der psychischgericht. Med., Leipsic, 1825; Kant, Anthropologie, Konigsb. 1798; Metzger's Ger. Med. Abhandl., Konigsb. 1803.

[2] Leçons Cliniques sur l'Aliénation Mentale, par Falret, leçon 1, p. 8, Paris, 1854. The most thorough of the German advocates of the somatic theory is Friedreich, particularly in

§ 330. The psychological theory, at its first inception, split upon the opposite rock, in denying the influence of the physical processes upon mental diseases in the face of experience. In opposition to the somatists, it was thought necessary to exclude all natural causes from the explanation of the origin of mental affections, and to ascribe them to an act of voluntary self-inthralment, which, in all cases, was to be attributed to some prior moral excess or delinquency incurred with a knowledge of the consequences. But a derangement of mind is not identical with sin. For, though every vice, every sin, is an abnormity of the soul, yet every abnormity of the soul is not sin. A lunatic may be, in a human sense, innocent of positive guilt; and, on the other hand, the worst of criminals may retain his sanity. It is impossible to adhere to this doctrine in practice, without reducing the entire treatment of the disease to a system of rewards and punishments; and the vagueness of the idea of freedom and constraint, the impossibility of distinguishing between the moral thraldom of the criminal and that of the sick man, will throw into confusion the entire system of forensic psychology.[1] It is equally wrong to derive all diseases of the mind from the passions, although the latter may be important causes, and, in the more advanced stages, symptoms of insanity.[2] At the same time, as will hereafter be more fully shown,[3] there is in the mass of cases of insane convicts such an amount of responsibility as to require the infliction of a degree of punishment which, though different from that imposed on the sane, will yet be accompanied with a corrective as well as a preventive discipline.

Psychological theory too great a reaction from the somatic.

his "Historisch-kritische Darstellung der Theorien über das Wesen und den Sitz der psychischen Krankheiten," Leipsic, 1836.

[1] Etudes Medico-psychologiques, par M. Renaudin, p. 166, art. 30, Sur la responsabilité morale, Paris, 1854; Leçons Cliniques de M. Falret, p. 11, discours d'ouverture, Paris, 1854; Manuel Complet de Médecine Légale, par J. Briand, sect. troisième, art. iii. p. 560, Paris, 1852.

[2] See *infra*, § 347. Heinroth is the leading representative of the psychological theory. See his "Lehrbuch der Seelenkrankheiten," Leipsic, 1818, and his "System der psychischgerichtlichen Medicin," Leipsic, 1825. Dr. Mayo, in his "Medical Testimony on Lunacy," goes some distance in the same direction; and, as has been seen, very justly argues in favor of a discrimination of punishment between the malicious and unconscious insane criminal. Mayo, etc., 50, 51.

[3] See, to this effect, Holtzendorff's Enc. 1870, tit. Wahnsinn.

§ 331. The *intermediate* theory is that to which the soundest psychologists now tend. "In the first place," says Sir William Hamilton, "there is no good ground to suppose that the mind is situated solely in the brain, or exclusively in any one part of the body. On the contrary, the supposition that it is really present wherever we are conscious that it acts—in a word, the Peripatetic aphorism, the soul is all in the whole and all in every part—is more philosophical, and consequently more probable, than any other opinion. It has not been always noticed, even by those who deem themselves the chosen champions of the immortality of the soul, that we materialize mind when we attribute to it the relations of matter. Thus, we cannot attribute a local seat to the soul without clothing it with the properties of extension and place, and those who suppose this seat to be but a point only aggravate the difficulty. Admitting the spirituality of mind, all that we know of the relation of soul and body is that the former is connected with the latter in a way of which we are wholly ignorant; and that it holds relations, different both in degree and kind, with different parts of the organism. We have no right, however, to say that it is limited to any one part of the organism; for even if we admit that the nervous system is the one to which it is proximately united, still the nervous system is itself universally ramified throughout the body; and we have no more right to deny that the mind feels at the finger-points, as consciousness assures us, than to assert that it thinks exclusively in the brain. The sum of our knowledge of the connection of mind and body is, therefore, this: that the mental modifications are dependent on certain corporal conditions; but of the nature of these conditions we know nothing. For example, we know, by experience, that the mind perceives only through certain organs of sense, and that through these different organs it perceives in a different manner. But whether the senses be instruments, whether they be media, or whether they be only partial outlets to the mind incarcerated in the body, on all this we can only theorize and conjecture."[1]

Sound psychologists tend to intermediate theory.

§ 332. The intermediate theory has at least not been rejected by standard Christian theologians. "The resurrection," says

[1] Sir William Hamilton's Lectures on Metaphysics, p. 356. See *infra*, 347.

This theory not rejected by standard theologians

Bishop Pearson, "is not only in itself possible, so that no man with any reason can absolutely deny it, but it is also upon many considerations highly probable, so that all men may very rationally expect it. If we consider the principles of humanity, the parts of which we all consist, we cannot conceive this present life to be proportionable to our composition. The souls of men, as they are immaterial, so they are immortal; and being once created by the Father of spirits, they receive a subsistence for eternity; the body is framed by the same God to be a companion for his spirit, and a man born into the world consisteth of these two. Now, the life of the most aged person is but short, and many far ignobler creatures have a longer duration. Some of the fowls of the air, several of the fishes of the sea, many of the beasts of the field, divers of the plants of the earth, are of a more durable constitution, and outlive the sons of men. And can we think that such material and mortal, that such inunderstanding souls, should by God and nature be furnished with bodies of so long permansion, and that our spirits should be joined unto flesh so subject to corruption, so suddenly dissolvable, were it not that they lived but once, and so enjoyed that life for a longer season, and then went soul and body to the same destruction, never to be restored to the same subsistence? But when the soul of man, which is immortal, is forced from its body in a shorter time, nor can by any means continue with it half the years which many other creatures live, it is because this is not the only life belonging to the sons of men, and so the soul may at a shorter warning leave the body which it shall resume again."[1]

The incorporeality of the soul not a canon of faith.

§ 333. To this may be added the authority of Isaac Taylor, who, in his "Physical Theory of another Life," after pointing out how completely the question whether the human soul is ever actually or entirely separated from matter is passed over by St. Paul as an inquiry altogether irrelevant to religion, continues: "Let it be then distinctly kept in view that, although the essential independence of mind and matter, or the abstract possibility of the former existing apart from corporeal life, may well be considered as tacitly implied in the

[1] Pearson on the Creed, ed. 1853, p. 558. See also Dr. Maudsley's remarks, *supra*, § 328.

Christian's scheme, yet that an actual incorporeal state of the human soul, at any period of its course, is not involved in the principles of our faith any more than is explicitly asserted."

Mind and matter united in our nature.

§ 334. "We are unable," says Pascal, "to conceive what is mind; we are unable to perceive what is matter; still less are we able to conceive how these are united; yet this is our proper nature."

And react upon each other.

§ 335. "Such," says President Edwards, the first metaphysician of his country, and perhaps the first of his age, "seems to be our nature, and such the laws of the union of soul and body, that there never is, in any case whatsoever, any lively and vigorous exercise of the will or inclination of the soul without some effect upon the body in some alteration of the motion of its fluids, and especially of the animal spirits. And, on the other hand, from the same laws of the union of the soul and body, the constitution of the body and the motion of its fluids may promote the exercise of the affections, but yet it is not the body, but the mind only that is the proper seat of the affections. The body of man is no more capable of being really the subject of love or hatred, joy or sorrow, fear or hope, than the body of a tree, or than the same body of man is capable of thinking and understanding. As it is the soul only that has ideas, so it is the soul only that is pleased or displeased with its ideas. As it is the soul only that thinks, so it is the soul only that loves or hates, rejoices or is grieved at what it thinks of. Nor are these motions of the animal spirits and fluids of the body anything properly belonging to the nature of the affections, though they always accompany them in the present state, but are only effects or concomitants of the affections that are entirely distinct from the affections themselves, and no way essential to them; so that an unbodied spirit may be as capable of love and hatred, joy or sorrow, hope or fear, or other affections, as one is that is united to a body."[1]

2. *Its effect on responsibility.*

§ 336. The intermediate theory, as above stated, relieves the doctrine of criminal responsibility of some of its chief difficulties. If the somatic theory be correct, then a criminal propensity is

[1] Edwards on Religious Affections, p. 15.

Intermediate theory relieves doctrine of responsibility of many difficulties.

a physical malformation, for which the defendant is no more responsible than he is for a malformation of the limbs. A squint in morals, to carry out a metaphor of Chief Justice Gibson, would in this view be no more a fault than a squint of the eyes. Such a criminal may be prevented from future misconduct; but, logically, neither punitive nor reformatory discipline can be applied to him; the first because it is unjust, the second because it is hopeless.[1] Here, indeed, the representatives of the somatic theory practically divide. By some, permanent incarceration—and this solely on preventive grounds—is the only penalty to which criminals can be properly subject. By others, among whom Mr. Bain is a modified representative, punishment is vindicated as having a necessary moral effect in reforming the criminal.[2]

On the other hand, if the psychological theory be correct, insanity, by becoming an organic intellectual lesion, is as much withdrawn, it may be argued, from the causal power of the will as it is on the somatic basis. It cannot be reached by penal discipline, for by the very hypothesis on which it is framed it rises above the action of the nervous and corporeal system. It cannot be reformed by bodily correction; and to attempt, therefore, by such correction to reach it would be both unjust and nugatory.

Question of penal discipline, how determined

§ 337. The intermediate theory, however, teaches us that insanity (with the exception of idiocy and certain hereditary and organic types) is (1) in a large measure the result of nervous and physical causes, often voluntarily induced, partly by the negligence and partly by the misconduct of the patient himself; and (2) that in such cases, by being made the subject of penal discipline, it may often be prevented or restrained. The remaining difficulty is to determine what are the cases to which such penal discipline is applicable. And here the analogies of the English common law give us a safe test. Where *mania-à-potu* results from drink, the party becomes irresponsible. Where, however, he commits a crime in a voluntary drunken fit, this drunkenness avails him nothing, unless to relieve him from the implication of premeditated malice or complex fraud. Thus, when the fatal assault is conceived by a party when intoxicated, he is

[1] See *infra*, § 348.

[2] See *supra*, §§ 146–160.

not presumed to act with premeditation or with that specific intention to take life which is necessary to subject him to capital punishment. So it is in insanity. Mania, when a permanent disorder of the intellect, by incapacitating the party from reasoning on the particular issue, relieves him from criminal responsibility. But a mere "monamania," unaccompanied by intellectual lesion, cannot, for penal purposes, be considered else than voluntary passion. It may be invoked to lower the grade from murder in the first to murder in the second degree, by depriving the intent of that coolness and specialty necessary to make up the former offence,[1] but it can never be the basis of an acquittal on the ground of irresponsibility.

[1] See *supra*, § 200.

CHAPTER II.

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I. BY WHOM.

§ 338. THE law with regard to the admissibility both of experts and of non-experts, and to the weight to be attached to their testimony, has been already stated.[1] It is well to keep in mind the suggestions of Hoffbauer in regard to the importance of adaptation, by the expert, of examination to character. The uneducated and the refined, the bashful, timid, and retiring, and the cunning, insolent, and hardened,

Character of examination should depend on character of subject.

[1] *Supra*, §§ 272–282, 294–300.

the eccentric, the victim of fixed ideas, and the lunatic, each requires a different style of treatment. The physician must reach the heart of the ignorant man by reference to objects palpable to the sense, and must address the man of education in the spirit which animates him. He must approach the bashful, the timid, and the morose with cordiality and affability, and exercise practical tact, circumspection, and adroitness in conversation with the cunning, the hardened, and the insolent, impressing them with respect for his personal and mental qualifications. On the whole, the tone of the subject must regulate the tone of the examiner. But, where one style of treatment is found of no avail, recourse must be had to the opposite one. Where the patient sits immovable as a statue, without answering any question addressed him, which often occurs in cases of deeply-seated melancholy, further questions should not be asked, but observation alone resorted to.[1]

Legal and medical functionaries should act in common.

§ 339. That a man is of sound mind, will generally be sufficiently manifest to a prosecuting officer of discretion; but whether a man is really or only apparently deranged, is a question which cannot be decided with the certainty belonging to science except by a physician; nor is it possible, without a knowledge of psychological medicine, to pronounce upon the influence exercised by specific forms of disease upon given actions.

The legal relation of courts to experts has been already fully discussed.[2]

It should not be forgotten, however, that it is of much importance in the diagnosis of insanity that the proper legal and medical functionaries should act *in common*. Written explanations are here of much less value than oral intercourse, where a few words will often suffice to remove a difficulty, to correct an error, or to supply an omission. In visiting a deranged culprit for this purpose, the prosecuting officer should invite the physician to accompany him. They then may alternately converse with the accused, whereby both the morbid and criminal peculiarities of the subject will be clearly unfolded to them both. It is well established that a man of unsound mind will act very differently, according as he views

[1] J. H. Hoffbaur, Die Psychischen Krankheiten in Bezug auf die Rechtspflege, Berlin, 31.

[2] *Supra*, §§ 190–199.

the persons before whom he stands with fear, respect, or confidence. It is sometimes advisable to invite the physician's attendance at an official hearing, where, under the semblance of a mere occasional and unofficial companion, he may make a diagnosis the more accurate because unsuspected.

§ 340. It is not to be denied that a lay observer, or an unassisted judge or jury, may be able to distinguish a case of fully developed and clearly manifested insanity; but, aside from the necessity of a knowledge of all the particular relations existing between a given state of disease and a given act, it is important that in all legal investigations the highest degree of certainty should be secured.

In this way greater certainty is reached.

The admissibility of non-experts, as a matter of law, is examined under a previous head.[1]

II. AT WHAT TIME EXAMINATIONS SHOULD BE MADE.

§ 341. There are three different times in which the conduct of the accused may become the subject of a forensico-psychological investigation: 1, at the commission of the deed; 2, during the trial; and, 3, after sentence pronounced. At each of these periods, the court has a separate point of view from which to regard the state of mind of the defendant, in each the purpose of the inquiry is different, and in each the interrogations to be directed to the physician must be modified accordingly.[2]

Examinations may be made at different times.

§ 342. In regard to the first point, the issues to be met by the physician should be, in general, whether a diseased mental state attended the commission of the act, wherein the disease consisted, and whether the mental and moral functions exercised and implicated in the perpetration were of such a nature that either, *a*, there was no consciousness of criminality and no freedom of volition, or, *b*, the possibility of such consciousness and spontaneity was excluded, or, *c*, both the one and the other were incapable of ascertainment and must be left in doubt. The practice which has lately grown up, of interrogating as to a conclusion of law (*e. g.*, was the defendant capable of distinguishing

1. At the commission of the deed.

[1] *Supra*, §§ 272–275.

[2] See Schürmayer, § 516, whose views are here adopted.

right from wrong, or was he a free agent), instead of as to a state of facts (*e. g.*, was he laboring under mental disease, and, if so, what), is not only false in theory, but pernicious in result. No expert can be viewed as satisfactorily performing his office in this respect, who neglects to familiarize himself with the patient's prior history.[1]

2. During the trial.

§ 343. The *second* period of time becomes of particular interest in those of our American jurisdictions in which, when a party alleged to be insane is put on his trial, the jury are specially sworn to determine the preliminary issue whether the defendant be insane *at the time of trial.* If the fact be found in his favor, he is confined under special sanctions. If otherwise, the trial proceeds on the main issue.

3. After sentence pronounced

§ 344. The third period of time, at which the state of a culprit's mind is open to medical investigation, is after the close of the trial, and before the execution of the sentence. A man of unsound mind is incapable of understanding the justice of his sentence, or of recognizing a punishment in the evil inflicted upon him. In many cases also the evil will aggravate his disease. For all these reasons it is necessary to be certain that a convict is so far in the possession of all his faculties, that the object of the law in subjecting him to punishment will be answered. The interrogations to be submitted to the physician are to be framed upon this simple principle ; and it is self-evident that only such derangements will here come in question as are clearly manifest, and as clearly exclude the possibility of the prisoner's understanding the reason of his punishment.

It would be a proper regulation to cause every convict, before undergoing his punishment, to be examined in body and mind by the physician, for the purpose of ascertaining his capacity for the ordeal. Even where the general fitness of the subject is undoubted, there are frequently personal defects which require attention in the treatment of the prisoner during confinement. In several of the German states this precaution is observed, and where a convict is found to be insane, he must be subjected to the proper treatment. If a cure is effected, the question whether he is now able to sustain the punishment without danger of relapse or other injury, is to be

[1] See *infra*, § 391.

decided by the forensic physician, upon a careful investigation of all the symptoms and attendant circumstances.

III. BY WHAT TESTS.

1. *Physiognomy.*[1]

§ 345. The general questions in relation to feigned insanity are noticed under a subsequent head.[2]

General appearance to be noticed.

"Close attention," says Schürmayer,[3] "should be first directed to the entire exterior of the subject, his posture, his motions, his gestures, his eye, his words, his intonation, and, above all, the first impression produced upon his mind by the appearance of the physician. What most distinctly characterizes a mental disease, and is never misunderstood by a skilful physician, is the physiognomy of such a patient. The eye of a madman is the mirror of his soul. He lacks the calm unobstructed gaze peculiar to the sane, untouched by passion or excitement." "Look," says Heinroth,[4] "upon the cunning leer of a lunatic, the savage glare of a maniac, the lack-lustre eyes of a splenetic, or the meaningless stare of an imbecile; such things cannot be counterfeited."[5]

The *form of the skull* is often peculiar in every description of mental disease, but is particularly noticeable in the case of cretins and natural fools.

§ 346. The expressions of the eye[6] and of the nose[7] have been

[1] See *infra*, § 450. The features of the face, says Falret, change at each instant or constantly preserve the same expression; the lips, the cheeks, the nostrils, the eyebrows, the eyelids, frequently show convulsive movement; it is the same with regard to the muscles of the eye, and under the influence of these convulsions, the look is troubled, bewildered, and unsteady. Leçons Cliniques sur l'Alienation Mentale, M. Falret, huitième leçon, p. 219. Paris, 1854; see also Orfila, Med. Leg. i. p. 379. Paris, 1848.

[2] *Infra*, §§ 443–460.

[3] Gerichtliche Medicin, § 529.

[4] System der gerichtlich psychischen Medizin, p. 343. See article by Dr. Laurent, translated in 20 Am. Journ. of Ins. 216.

[5] Drawings, very well executed, are to be found in Morrison's Outlines of Mental Diseases, London, 1829, and in Esquirol, *Des Maladies Mentales*. Paris, 1838.

[6] Loebels, Grundriss der Semiologie des Auges. Jena, 1817, p. 27.

[7] Hoefling, in Casper's Wochenschrift, 1834.

Also expression of eye and nostrils.

very capably exhibited by two eminent physiognomists. The latter feature has been examined with peculiar ability by Hoefling.[1] "In the apparently joyous countenance of a laughing madman," he tells us, "the upward traction of the sides of the nose, nevertheless, indicate unmistakably the presence of pain, and this expresses much of the physiognomic peculiarity of such unfortunates.[2] In like manner the simple unmeaning smile of imbecility is marked by the form and shape of the nose, which, with its downward, circular openings, and the tension of the skin on the peak, expresses a torpor, while in the laugh of a sane man the notrils contract, and become elongated, without a departure of the septum from its horizontal position." The mouth of the simpleton twitches with a constant unmeaning smile, accompanied with a low, inarticulate and thoughtless mumble, and the imbecile is almost always found, sitting or standing, with parted lips.[3] "With many," says Schürmayer, "the mouth is constantly in motion, as if they were talking to themselves. In the paroxysms of mania there is a convulsive distortion or contraction of the mouth. Receptivity for certain external impressions is generally low, particularly in the case of impressions accompanied with pain,[4] of cold, heat, and certain medicines."

§ 346 *a*. "The condition and color of the skin," says Dr. Laurent, "have great value in the eyes of the alienist physician. I

[1] Ibid.

[2] "To represent the prevailing character and physiognomy of a madman, the body should be strong and the muscles rigid and distinct, the skin bound, the features sharp, the eye sunk; the color of a dark brownish-yellow tinctured with sallowness, without one spot of enlivening carnation; the hair sooty black, stiff, and bushy, or of a pale, sickly yellow, with wiry hair."—*Anatomy of Expression*. Sir Charles Bell, London, 1844.

> "His burning eye, whom bloody strokes did stain,
> Stared full wide and threw forth sparks of fire;
> And more for rank despight than for great pain,
> Shaked his long locks, colored like copper wire,
> And bit his tawny beard to show his raging ire."
>
> *Faery Queen*, Book ii., canto 4, v. 15.

[3] Danz, Allgemeine Medizinische Zeichenlehre. Heinroth's edition. Leipsic, 1812, p. 353.

[4] Compare Friedreich, Handbuch der Allgemeine's Pathologie der psychischen Krankheiten. Erlangen, 1839, p. 121.

Color and condition of skin.

think it right expressly to insist on the symptoms furnished by this organ. I have noticed some very curious morbid phenomena. Professor Trousseau has specified in his clinical lectures some very important peculiarities in the functions of the skin manifesting themselves during head affections. After the example of this learned man, I must insist on this point. Color furnishes signs well worthy attention. The skin of the face—and it is of this part alone I speak—may be dry and arid, the seat of herpetic scurvy and scaly eruptions, or may be moist with perspiration, or a liquid secretion of a more or less oily nature and of variable odor. Its color is susceptible of numerous general or partial modifications. It may be pale. This pallor has divers shades, from pure white to the slightly yellow tinge (compared to that of straw or wax), or earthy brown, and bronzed. It may be of every shade of red, from rosy to vermilion, violet and purple. But season and exposure to the sun's rays should always be taken into consideration. The skin may have a greater or less tonicity, and the subcutaneous, subcellular tissue be more or less elastic. It also is marked by lines and furrows, which are of importance as indicating the amount of activity of the subjacent muscles. At first, during infancy and adolescence, few in number, their formation becomes fecund in proportion as age advances, which must be attributed to the thinning of the face or the loss of the mobile parts by age, sickness, passion, and deep emotion of the soul. I think it unnecessary to describe these furrows, which may assume different forms—horizontal, vertical, oblique, sinuous, and more or less close or parallel.

"The organ of sight offers for consideration its form, movements, and expression. The eyes may be more or less prominent or depressed in the orbit; the aperture between the lids smaller or greater; the sclerotic, very apparent around the pupil, exhibits a variable blush, yellowish or red tinge; the dilatation of the vessels very evident. Little livid or black veins may be perceived on it. The conjunctival surface may be dry, humid, or moistened with tears; the pupils may be deformed by being equally or unequally dilated or contracted. Strabismus may be observed; a distortion of the eyes by which they look crosswise, either above, below, or to the side, twisting even during sleep. In the normal state the ocular globe is susceptible, under the influence of the will, of numberless motions in every sense, and these motions may have a longer or shorter

duration; but in the morbid state, and without their owner's control, a sort of trembling, oscillation, or vacillation of the globe may be manifested, a kind of continual or permanent convulsion, in consequence of which, most frequently, little lateral, sometimes, though rarely, up and down, movements are given to the globe of the eye.

"The expression of the eye calls for special attention. The eyes are sometimes lively and brilliant, sometimes sad and glazed. Often they have a soft, dreaming look, expressive of vacuity, uncertainty, or nonchalant calmness; at other times they become animated from the slightest cause, have a lightning glance, are haggard, insolent, full of audacity, fixed, and inquisitive. Each of these expressions has a different intensity and duration, and responds to very different situations.

"In accordance with the protrusion or sinking of the globe of the eye, the eyelids take shape—they are swollen or œdematous; have at times a very pallid color, at others become red or blue; and exhibit wrinkles of diverse shape and in variable number. They may likewise be agitated by convulsion, or show a very significant immobility. Each lid may differ in the length and abundance of its lashes; the ciliary margin may be the seat of inflammation due to nervous excitation. Occasionally the eyebrows are of fantastic shape. Sometimes little noticeable, sometimes strongly marked, they stand up on the forehead, or fall back on the eyes, curling after the style of moustaches. The shape of the nose has a pathological signification which should not be passed over in silence. Besides the color and swelling or thinness of the fleshy parts of the proboscis, a careful examination should be made of the more or less easy dilatation of the nostrils, their mobility or fixedness, the tension or the retraction of their walls. Dr. Hoefling attaches much more importance to the signs furnished by the nose than to those given by the eye. The mouth presents for examination the state of the lips, with their relative situation during repose, their volume, color, dryness, or humidity. The motion of the mouth has a very important signification, and leads to a notable modification of the commissure of the lips. Permanent contractions, alternations of tension or relaxation, partial or general tremor, the diverse forms of spasm, deserve much attention. These manifestations have a very decided meaning.

"What we have just said relative to the motion of the mouth

and lips is applicable to all the locomotive system of the face. Tension or relaxation, continual or alternate movements, immobility, may appear in various grades in each of the facial muscles. To facial symptomatology must be added also an examination of the parotid and auricular regions. We should carefully note the pallor, redness, and swelling of the cheeks, the color, swelling, mobility, or immobility of the ears, as well as the appearance of sanguineous tumors of the auricle.

"Dr. Morel attaches much importance to the way in which the ears are fixed, and makes this one of the characteristic signs of his types of degeneracy.

"It is of some importance to let this physiognomical survey embrace the carriage of the head, which is often noticed to be variable, according as the individual has a more or less favorable opinion of his personality, and from numerous other causes."[1]

2. *Physical conditions.*

Somatic conditions often important.

§ 347. *Somatic* conditions, as has been seen,[2] though not necessary to prove insanity, as insanity may exist when the bodily functions are in undisturbed health, are often important tests of an insane state, and the more so because they cannot be readily feigned. Among these conditions may be again enumerated disturbances of the motor spheres, of the vegetative organs, of sleep, of the pulse, and the peculiar condition of the evacuations, *e. g.*, increased phosphate in the urine. Sleeplessness is a condition which it is peculiarly difficult to simulate.

(*a*) *Injuries to brain.*

Insanity not a necessary sequence of disease.

§ 348. Science, says Dr. Liman,[3] whose judicious observations have already been frequently cited, teaches that mental disease is not an abstract entity, but is conditioned by brainular and nervous disease, by which psychical functional disturbances are generated which are subordinated to the laws of the physical disorder. The brain may be idiopathically diseased, or the affection may be sympathetic. Under favoring

[1] Am. Journ. of Ins., October, 1863.

[2] *Supra*, § 329. See an article in 18 Journ. Ment. Sci. 390.

[3] Liman's Casper, Berlin, 1871, p. 434.

circumstances, this sympathethic brainular action may be produced by every form of disease (*e. g.*, typhus, cholera, exanthematic fever, pneumonia, erysipelas, acute rheumatism, abdominal and genital diseases, heart disease, tubercular affections) as well as by those physiological causes which are generally specified in the books, viz., puberty, the menses, pregnancy, delivery, lactation, involution, old age, and by psychical causes, such as passion, mental shocks, etc. Experience, however, teaches that nervous diseases, superinduced on a favoring psychopathical disposition, not only are of peculiar moment in inducing mental disorder, but form a basis of experience on which rests the ætiological classification of psychical disease. But it is nevertheless important to recollect that while these physical and nervous disorders serve to explain the nature and strengthen the proof of insantity otherwise substantively proved, they do not as a necessary sequence prove insanity, and frequently exist without it. To this it may be added that this doctrine of necessary sequence in such cases is fraught with several deleterious results. First, its acceptance would be cruel to the persons laboring with the physical and nervous complaints in question, for, if not leading to their sequestration from society as persons *non compotes mentis*, it would deprive them of the power of business self-support. No one could enter into contracts with them: no one could take business paper executed by them: no one could treat them as vested even with that testamentary power which, as has already been seen, forms one of the few means of insuring respect retained by the aged and forlorn. And, secondly, such persons would form a dangerous aristocracy, exempt from the operation of penal laws. Insanity being a material and necessary result of disease, if diseased, they would not be penally responsible for crime.[1]

Brain disease may develop rapidly.

§ 349. Brain disease often displays itself in moral and mental transitions which are not only conspicuous and startling, but comparatively rapid and complete. Sometimes, however, the causes work more slowly. There is no immediate and complete revolution of character; but there is a gradual protrusion of some specific peculiarities and depression of others. The first change may be likened to a great terrestrial catastrophe, a cataclysm by which the whole face of nature is

[1] See *supra*, § 336.

changed: the second to the process of transformation produced by the gradual rising of the sea, by which valleys are filled up and mountains depressed. Sometimes the process of transformation, in the second case, is very slow, and yet, nevertheless, is distinctly traceable to physical causes. "The patient," says Krafft-Ebing (1872),[1] a very high authority in psychological medicine, "becomes (after injuries or shocks to the brain) excitable, violent, brutal, quarrelsome, prone to excesses *in baccho et venere*, and approaches to the ideal of a maniacal moral insanity. By many, particularly in those in whom delirium subsequently breaks out, a qualified maniacal exaltation shows itself in the form of unsteadiness, of passion for travel, of inclination to a vagabond life. These are generally the antecedents of mania, which begin the process of psychical anomalies; more rarely, but especially in those cases which terminate in paralysis, the prodromal symptoms consist in brainular exhaustion, and express themselves progressively in weakness of memory, dulness, apathy, decrease of self-determining power."

§ 350. The psychical effects, however, as has been just noticed, may be very slow. Years may elapse from the time of the injury before the shock displays its psychical consequences. Griesinger throws out several very interesting hypotheses as to the slow processes by which a little apoplectic cyst, or an ulcer, may work into the soft substances of the brain, until suddenly occurs insanity or death. Yet there is great reason for caution when adducing such prior stages as confirmatory of insanity. Often, when insanity is sought to be proved, a scar on the head is put in evidence. Yet the cases are numberless in which, particularly in infancy, injuries to the skull have been sustained, and even severe wounds inflicted, without the mind being subsequently disabled.

Or slowly, in different cases.

§ 351. "The element of time," says Dr. Laycock (1871), "is a very important point in the diagnosis and prognosis of this class of cases. The progressive degeneration may extend over several years.

"In July, 1868, I saw a captain in the Royal Navy, who, fifteen years before, when a midshipman, fell about eight feet as he was descending Table Mountain, Cape of Good Hope. He received a

[1] Ueber die Gehirn-Erschütterung, etc., Erlangen, 1868.

scalp wound, which bled freely, and he thought he must have been made unconscious. The surgeon of his ship examined, but found no fracture, and dressed the wound, which healed well. I found an extensive scar on the scalp, over the curve of the left parietal region, and the surface slightly depressed. This had led some to propose trephining. Twelve years after the injury he married, and shortly after had habitual headaches, with mental depression, increasing until he became melancholic. Rest from active duty restored him to comparative health of both body and mind, but his manner continued peculiar. He, however, resumed charge of a ship, and so got involved in harassing and anxious night-duties off the Irish coast, watching the Fenians. This exhausting work induced a series of neuroses of the encephalon, which were progressively intensified into structural disease, until (when I saw him) he was weak of mind, incapable of movement, passed urine and feces involuntarily, and had great difficulty of articulation, as well as an incapacity to express his ideas by appropriate words, although he easily smiled and laughed. Early in November of the following year he had successive fits of convulsions, became unconscious, and so died, sixteen years after the injury to the scalp."

(*b*) *Anomalies of sensibility, of pulse, of secretions, and of senses.*

General health to be considered.

§ 352. Under the present head, it is proper to notice the importance of the attention of the medical examiner being turned to temperament, disposition, and age; in the case of females, to the development of the functions of menstruation, pregnancy, delivery, suckling;[1] to mental characteristics, powers, and habits; to the condition in life and profession; to the questions of rest and exercise, sleep, and watching; to excessive evacuations, particularly if connected with sexual gratifications; to sexual abstinence; to bodily injuries, besides those of the head, such as diseases of the heart, hemorrhoids, obstructions of the abdomen, and to cutaneous diseases.

Anomalies in other parts of the body of great value

§ 353. "Symptoms of bodily disease ascertained by the state of the pulse, the digestion, the secretions, etc., cannot naturally, in any case, be taken as proofs of mental disease; the diagnosis depends essentially and

[1] On this point Dr. Storer's treatise on "Insanity in Women" will be found of much value.

exclusively on the mental symptoms. Nevertheless, those symptoms of diseases in other parts may be of great value. From them we are enabled to answer the question, Is the individual in a state of general ill-health? If, from these symptoms, this can be said with certainty—if, on the one hand, a striking mental change is observed, or very suspicious behavior, and, on the other, a general morbid state of the organism be present—it becomes highly probable that both series of phenomena are related to each other, that is, that the mental change is itself morbid. As, however, insanity depends essentially on an affection of the brain, there are none of all the psychical symptoms, not in the narrow sense, of greater significance than certain phenomena of disturbed (irritated, depressed, etc.) cerebral function.

"Therefore anomalies of the central sensorial function, halucinations, etc., are of such extraordinary value, and violent headaches, sleeplessness, fainting, anæsthesia, changes in the pupils, all concomitant convulsions, and paralyses, are also of such great importance, in the diagnosis of insanity.

"If these symptoms can be traced to an affection of the brain, and if we can, by these, prove that at all events a cerebral affection is present, it is clear that in few cases we can doubt that the suspected psychical symptoms depend also upon the cerebral affection; at least the opposite can seldom or never be shown. On the other hand, the non-appearance of such further symptoms, and the absence of all physical disorder (of the pulse, digestion, etc.), can never be taken as proof of the absence of a mental disease (that is, a cerebral affection of which the actual symptoms are exclusively psychical); we frequently meet with cases of undoubted mental disease, especially chronic cases, in which the bodily functions remain unimpaired."[1]

§ 354. That insanity may be one of the incidents of physical disorganization, is illustrated by a case mentioned by Wigan in his remarkable work on the duality of the mind.[2] "The gentleman held a situation in which he had many younger persons under him. I purposely leave the designation obscure. He had risen to the head of the office by

Insanity with physical disorganization.

[1] Griesinger's Mental Pathol., Syden. ed. (1867) § 73.

[2] A New View of Insanity, etc., by A. L. Wigan. London, 1844, p. 81.

long and exemplary services. He was a widower, and had a considerable family, all of whom, however, died in their youth. He exercised a parental control over his subordinates, and was extremely respected by every one who knew him. His salary was ample, his excessive benevolence had, however, always kept him poor, but, as his style of living did not imply the expenditure of more than half his income, he had the reputation of wealth. Gradually, towards the age of sixty, this gentleman became garrulous and light in his conversation, and the others in the office suspected him to have been drinking. He had many rebuffs from the persons under his command, but this in no degree changed the indecorous levity of his conversation, which had formerly been remarkably dignified, and as reserved as was compatible with his excessive benevolence of disposition. Months and months passed on, his language became gradually worse, and at last was of the most depraved obscenity. This shocked and disgusted his juniors, and he was seriously threatened with exposure by them. The propensity was checked for a while, but after repeated offences and repeated forgiveness by the young men, they made a formal complaint to his superiors. The offender was taken to task very seriously, but, as the young men had given rather a lenient representation of his conduct, he was permitted one more trial, with the assurance that his next offence would be followed by his dismissal. There was soon an opportunity of putting the threat in force, for his conduct and conversation became more and more gross and disgusting. He was dismissed. Having made no provision, he suddenly found himself utterly destitute, but did not make known his position. He packed a bundle of necessary clothes, put in his pocket whatever money and trinkets he possessed, and wandered about the country without aim or object. Every one lost sight of him for two or three months, when he was found in a remote part of the kingdom *literally dead on a dunghill*, where it is supposed he had laid himself down for warmth; his money was gone, and, from the state of the stomach and intestines, it is probable that he had died of want of food as the immediate cause, but, on examining the interior of the skull, there was found extensive softening and disorganization of the left cerebrum, and the other was not free from disease. He could not

have lived long; though, under proper care, the disease would not have been immediately fatal."[1]

Range of sensibility in the insane.

§ 355. A diminution of sensibility, says M. Falret,[2] is not of common occurrence in mental diseases, its exaltation being much more frequent. It is proper, however, to state that deranged persons are generally as sensible of temperature and impressions as persons ordinarily are. Lesions of the sensibility, however, are observable in all kinds of insanity, and especially in those cases in which mystical ideas are predominant, in demonomania and paralytic insanity. General insensibility has been known to take away from some madmen the sense of their own existence. M. de Foville cites the example of a man who thought he had died at the battle of Austerlitz, at which he received a severe wound. His insanity consisted in his inability to recognize and feel his own body. When any one inquired after his health, it was customary for him to reply, "You ask me how father Lambert is, but father Lambert is no more; he was killed by a bullet at Austerlitz. That which you see here is not he, but a machine which they have made to resemble him, and which is very badly made, so try and make another." Never in speaking of himself. did he say "me" (moi), but "that" (cela). This man fell several times into a complete state of immobility and insensibility, which lasted several days. Sinapisms and blisters applied to guard against these accidents never produced the least symptom of pain. He often refused to eat, saying, "ça n'avait point de ventre."

Esquirol was unable to discover any sign of pain in passing a pin through the skin of the arm of a demonomaniac, who asserted that he no longer felt anything, and who imagined that his body had been carried away by the devil.

§ 356. "Diminution or complete suppression of the sensibility of the skin to impressions of temperature and of pain is by no means

[1] Generally, of all the causes of mental alienation, the most frequent, without doubt, are cerebral affections or some alteration of the encephalic organ, and perhaps we should agree with Haslam in saying, that the primitive cause of mental derangement is *always* to be found in these alterations. —*J. Briand, Méd. Lég.*, p. 544. Paris, 1852.

[2] Leçons Cliniques de l'Alienation Mentale, par M. Falret. Septième leçon, p. 185, Paris, 1854.

frequent, still less is it general in insanity. We find, on the contrary, in some instances an excess of sensibility to pain (Esquirol relates such a case), and it is remarked that in asylums in winter the patients, with very few exceptions, constantly seek the warmth. Nevertheless, cases of transient and persistent cutaneous anæsthesia (as already shown in the foregoing), and of analgesia, are sometimes seen, particularly in states of melancholia and dementia, and, confined to more local limits, it is also frequent in hysteria. A careful investigation of the cutaneous sensibility in the various parts of the body should always be made."[1]

Instances of want of sensibility.

§ 357. "Rochoux (sitting of the Académie de Médecine, 22d December, 1840) communicated a case of accident which occurred through want of sensation in the patient. A patient in Bicêtre, while no one was in the room, laid his head on the red-hot iron of the stove, and put his arm into the midst of the fire. The strong smell first drew the people near; the patient was quite unconcerned, and throughout gave no sign of pain, though the arm was burned to the bone.

"In the 'Zeitschrift für Psychiatrie,'[2] there is an example of voluntary self-burning by a melancholic patient. He was quite happy, although legs, thigh, and nates were burned, so that even the bones were charred.

"A patient in Bedlam, mentioned by Morison, laid the back of his head upon the fire till the quarter part of the cerebral coverings were burned; he, however, recovered.

"Michéa[3] cites a number of cases in which melancholics suffered mutilation without pain (analgesia), and it is interesting that this state often exists also in delirium traumaticum (nervosum), so that the patients tear off the bandages, and use most regardlessly the broken limbs (Dupuytren, Klose).

"Snell,[4] in 180 patients, found the skin quite anæsthetic in 18(?), and in 6 there was analgesia; the anæsthesia in states of excitation and depression was present always in cases presenting little hope of recovery. A very remarkable case is communicated by Renaudin,[5] of a boy who had hitherto conducted himself perfectly well,

[1] Griesinger's Mental Pathol., Syden. ed. (1867), § 50.

[2] 11, 1854, p. 717.

[3] Gaz. Hebdom. 1856.

[4] Zeitschrift für Psychiatrie, 10, 1853, p. 213.

[5] Moreau, Psychologie Morb. p. 312.

and all at once exhibited the worst desires and most reprehensible behavior. He was not entirely insane, but the whole cutaneous surface became sensationless. This state was intermittent, and, when it went off, the patient became again quite orderly and obedient. Simultaneously with the anæsthesia the worst desires, even desire to murder, returned. In general paralysis, too, there is sometimes present an evident diminution of the cutaneous sensibility. Diminution of the sense of smell may be assumed in those patients who would amuse themselves with their excrements. All these anæsthesia must have a central basis."[1]

§ 358. In regard to anomalies of general sensibility associated with no illusion, there are madmen who appear insensible to the ordinary causes of pain. Esquirol speaks of an idiot girl who was in the habit of scratching a lump she had upon her cheek, and did not stop until she had perforated it, and, after having performed this perforation, she enlarged the wound by continually pulling at it with her finger. Deranged persons often cut themselves in different parts of the body without appearing to suffer. But the greatest phenomenon of insensibility is the indifference with which persons afflicted with insanity support *cold*. They have been known to expose themselves in the open air, to sleep upon the ground, flagstones, and the floor, when the ice and snow caused persons warmly clad to shiver. And imprudences like these appear to have a less dangerous influence upon the insane than upon others. This fact, however, has been much exaggerated, and in many instances the ordinary effects produced by cold are observable in the deranged. These unfortunates are so exposed to freezing, that in many establishments there is an express law to visit, morning and evening, and wrap in flannel the feet of those whose condition causes these dangerous consequences to be dreaded.[2] Some show themselves equally indifferent to *heat*. There are those who walk and sleep entirely naked in clear sunlight upon the hottest days, and who can look fixedly for a long time upon the sun without being dazzled by it.

Insensibility to cold a frequent symptom.

[1] Griesinger, *ut supra*.

[2] "Dans le plus haut degré de la manie les malades oublient leurs besoins, et sentent à peine, ou pas du tout, *la douleur*, *le froid* et *le chaud*." *Manuel de Méd. Lég.* M. Orfila, tome i. p. 377. Dr. Rush makes insensibility to the weather, particularly cold, a marked test.

§ 358 *a*. Hunger and thirst are usually intense, digestion varies, while the bowels are almost invariably obstructed. The skin is usually dry, rough, and inactive.[1] The presence of almost all persons of unsound mind is distinguished by a peculiar specific smell.[2]

Other physical tests.

The *genital functions* are ordinarily preserved by the insane; sometimes, indeed, their activity is increased, although the mental disease may not be of erotic origin. This super-excitation of the genital organs, independent of physical or moral erotomania, is particularly observable in agitated delirium; whilst in despondent delirium they are inactive, at least if it have not love for a cause or object. The cases are rare, however, where the sexual organs are attacked with insensibility or impotence, except in general paralysis. The aptitude of man and woman for the venereal act and for fecundation is not lost: though in insanity as in sound mind, the rapid succession of ideas, the violence or tenacity of pre-occupations foreign to amorous desires are capable of bringing on an inactivity of the genital functions.

§ 359. The *pulse* forms no test.[3] M. Jacobi has instituted experiments, in a large number of cases of the different forms of mental unsoundness, indicating at the same time the relative pulsations of the several arteries, auscultating the heart, and counting the number of inspirations and expirations. The attempt to deduce a fixed rule, however, was in vain. "I had the vexation," he tells us, "to see that my researches, so conscientiously made, did not fulfil the end I had proposed; and I saw that it was impossible to establish the necessary connection between the different pathological states of the intellect and feelings, and the observations I had collected on the state of the circulation, the respiration, and the temperature of the skin, in the insane."[4]

The secretions a test, but not the pulse.

[1] See an article by Dr. Fèvre, Annales Médico-Psychologique, 1876.

[2] Compare Hill's Essay on the Prevention and Cure of Insanity. London, 1814, p. 401. Erhard in Wagner's "Beiträgen zur Philosophischen Anthropologie," vol. i. Vienna, 1794, p. 111. Milling's Mentis Alienationum Semiologica Somatica, Bonn, 1828, § 15. Burrow's Commentaries, p. 297. An article by Dr. Laehr, Zeitschrift für Psychol. 34 Band, 3 Heft.

[3] See article 26 Am. Journ. of Ins. 324.

[4] Jacobi, Annales Medico-Psychologiques.

The *secretions*, and particularly the perspiration, are imperfectly performed in the majority of insane cases. In these cases there is a dry skin of an unhealthy color, and the exhalation of a disagreeable smell. They do not grow thin, but even become fat, although eating little, because they perspire badly. They urinate a great deal, and the passage of urine is frequent, as is common in all nervous disorders. *Constipation* is an almost habitual attendant of the disease.

Without being oppressed, the *respiration* in the insane is sometimes unequal, hurried, diminished, interrupted, and sobbing. Their breath is often fetid, and this accidental fetidity, an ordinary symptom of all nervous diseases, frequently announces the approach of an attack of melancholy, mania, or hysteria.[1]

§ 360. The most interesting symptoms are found in the various abnormities of the sensorial system, as manifested in the excitement, depression, or delirium of one or the other of the senses. An excitement or depression of the sensorial system generally keeps even pace with the mental malady. Before the mental disease breaks out, and while its advent is indicated by mental and moral excitements, an enhanced excitability in the sensorial system becomes perceptible, which, however, where psychical energies are gradually exhausted by the recurrence and violence of the paroxysms, frequently turns to an opposite condition, so that the failing, obtuseness, or loss of one of the senses attends the subsequent progress of the evil. According to Spurzheim,[2] the ear is the sense which, of all others, suffers most among the insane, and there are more deaf than blind among them. The deliria of the senses, which are either illusions or hallucinations, are found in every form of the disease; they sometimes attack one sense only, sometimes several, and sometimes, though rarely, all the senses at once.[3]

Abnormities of the sensorial system most interesting.

[1] Leçons Cliniques de l'Alienation Mentale, par M. Falret. Septième Leçon, p. 185. Paris, 1854.

[2] Beobachtungen ueber den Wahnsinn. Nach dem Englischen und Franzoesischen bearbeitet von Embden, p. 81. See Méd. Lég., M. Orfila, tome i. p. 358. Paris, 1841. Méd. Lég., Briand, p. 540. Paris, 1852.

[3] For a full account of the illusions and hallucinations of the senses we would refer the reader to the Leçons Cliniques sur l'Alienation Mentale de M. Falret. 3d, 4th, 5th, 16th lessons. Paris, 1854. Also to the Etudes Medico-Psychologiques sur l'Alienation Mentale, par F. E. Renaudin. Chap. 8th, p. 388. Paris, 1854.

Esquirol gives it as the result of his experience[1] that when the alienation of the mind begins, and sometimes a little earlier, smell and taste have changed, but the deceptions of the ear and the eye generally characterize the fancies of most madmen. The deliria of smell are less frequent than those of the other senses, those of taste are of the most various kind, and those of touch impress the patients with the existence of attributes in bodies other than those which they possess. These deliria frequently give rise to fixed ideas; particular postures, various attitudes and motions, are observed in almost all madmen.

Change of moral disposition not unusual.

§ 361. A change of moral disposition, as will presently be seen,[2] is one of the first symptoms, other than physical, with which the disease usually makes its appearance. Extreme irritability, proneness to anger, suspicion, concealment, obstinacy, and perverseness, are common. In regard to the affections, various abnormal impulses and inclinations are observed: such as fondness or aversion to particular persons, without any special reason; disposition to exercise cruelty, murderous desires, a wish to commit arson, or to steal.[3] Memory is generally good in reference to things occurring during the disease, or to persons with whom the patient was then connected, but defective or mistaken as to things which occurred previously.[4] Of the intellectual faculties not all are uniformly in an abnormal state; on the contrary, some functions occasionally improve, thus producing a complex state of madness on the one hand, and of wit, reflection, and shrewdness, on the other.[5]

[1] Compare Hagan Die Sinnetauschungen in Bezugauf Psychologie Heilkunde, und Rechtspflege. Leipsic, 1837.

[2] *Infra*, §§ 390–398.

[3] See *infra*, §§ 391–398. "A deranged person," says Orfila, "regards with indifference the dearest objects of his affections, he thinks no more of them or holds them in such aversion as to repel, injure, and maltreat them. Hatred, jealousy, anger, wickedness, fear, terror, a disgust for life, a desire to destroy and kill, replace the most equal, calm, and softest nature."—*Manual de Méd. Lég.* M. Orfila. Tome i. p. 382. Paris, 1848.

[4] A great many remember things which occur; and after their recovery they often astonish by observations which they had made at a time when they seemed most completely deprived of their reason.—*Méd. Lég.* J. Briand, p. 540. Paris, 1852. See *infra*, § 410.

[5] See cases collected by Friedreich, Handbuch der allgemeinen Pathologie, p. 189. See *infra*, §§ 378–385; 406–409.

3. *Hereditary tendency.*

(*a*) *Psychologically.*

§ 362. By Morel, in his *Traité des Maladies Mentales*, published in Paris in 1866, the line of descent in cases of hereditary insanity (*folie héréditaire*) has been traced with peculiar delicacy and fulness. The stream is shown sometimes to change its channel, sometimes to swell as it descends—*viresque acquiret eundo.* In the parent it exhibits itself in the form of extreme nervous sensibility and excitability. The child is the victim of hallucinations, if not of mania. In remoter descendants are exhibited imbecility, cretinism, united with physical degeneracy. No doubt cases are found where a law of deterioration such as this is seen progressing with apparent certainty in its downward path. But, like all other cases of assumed psychical law, the theory breaks down when we attempt to establish it as a universal rule. Lord Chatham was at certain periods of his life hypochondriac if not insane; yet his son William Pitt was remarkable for his intellectual equipoise and exactness. Of the prolific family of George III. no one inherited his insanity. Innumerable cases of nervous excitability and eccentricity present themselves to us when we take up such works as Walpole's Correspondence, or when we look back even at those who were the parents of our own contemporaries; yet rarely indeed do we find instances of the development of such excitability and eccentricity, from generation to generation, into lunacy and idiocy. Yet, at the same time, of a large proportion of lunatics, as is elsewhere stated, the immediate ancestors were affected with some phase of mental disease.[1]

Descent of insanity, though not universal, follows ascertained rules.

§ 363. Of the hereditary insanity—*folie héréditaire*—which is thus assumed, Morel gives the following symptoms: Early or disproportionate intellectual activity accompanied by deficiency in higher moral power—the early development of instinctive impulses—tendencies to cruelties—irritability, bizarre whims, fanciful caprices, and business heedlessness, as among the accompaniments of the approach of puberty. So also are to be reckoned, as general symptoms, ex

Symptoms of hereditary insanity.

[1] See Heredity, from the French of T. Ribot. London, 1875.

travagances of expression; periods of *ennui*, in which labor is odious, interchanged with those of intense and feverish activity. It is remarkable, however, that these symptoms are rarely to be observed among the children of the poor. They are rather the incidents of the spoilt children of fortune, the results of want of hard home-discipline. And in order to make them comparatively ungovernable, it is only necessary to withdraw the discipline the state exercises through its penal laws. If we concede that such persons form a hereditary class who are not to be restrained by fear of punishment because to punishment they are not amenable, we will do much to establish in them, in the shape of uncontrolled passions, the very mental disorder which the speculative theorist declares to be their predestined lot.[1]

Insanity often hereditary.

§ 364. At the same time there is no question that insanity runs in families. "A considerable portion," to quote from an intelligent note to the pamphlet report of the trial of Andrews, in Massachusetts, in 1868, "of those who have suddenly appeared to be insane, were of unsound cerebral constitution by inheritance, their parents or ancestors having been insane." Tuke, referring to this class of transient cases, says: "An inquiry into the patient's history will generally detect a change in character; this, however, obviously cannot be looked for in cases where mental disorder can be traced back into infancy, or where the intellectual and moral defects are congenital."[2] Again he adds: "In some persons there is rather a congenital proclivity to disease than the actual disease itself, and in these, a circumstance which, in persons without that proclivity, would produce no result, will call into action abnormal, that is to say, truly diseased, mental manifestations, although they may be only functional and subside when the exciting cause is removed."[3]

Devergie says: "If we examine the ancestral history of the families, on the paternal or the maternal side, of these transitory maniacs, it is not rare that one or even many members of the family have been insane for longer or shorter periods." He quotes the case of one of these patients who had committed homicide in a transitory paroxysm, "in whose family one maternal great-uncle

[1] See *supra*, §§ 146–160; 195–199.

[2] Bucknill and Tuke, Insanity, 201.

[3] Bucknill and Tuke, Insanity, 186. See an article in 2 Brain, 491.

died insane; one paternal aunt killed herself, and another relative on the mother's side was known to have been troubled with eccentricities (*bizarres idées*) all her life."[1]

Castelnau, describing one who, in a momentary paroxysm of mania, had killed another, said, "that her mother suffered from grave disease of the cerebro-spinal system, and had hemiplegia previous to this daughter's birth. Her grandfather was insane, and her brothers were strongly impressed with the character of her ancestors."[2] Of another he says the grandmother and great-grandmother were insane, and the father was considered by the neighbors as not sane.[3]

§ 365. "In a great majority of cases," says Dr. Wood, "insanity is produced by exciting causes acting upon a predisposition to the disease. *Inheritance* is the most frequent source of this predisposition—perhaps more frequent than all others put together. Even a particular form of insanity is often inherited; and it has been noticed that the attack is apt to come on at the same period of life in the parent and his offspring. The tendency to suicide not unfrequently descends from parent to child. It is thought that children born before the occurrence of insanity in the parent are less liable to be affected than those born subsequently."[4]

§ 366. "Although at the first glance," says Renaudin, "man appears to possess an independent existence, isolated from his birth from those who begot him, although there is but little apparent relation between his ripe age and first infancy; it is not the less true, that, behind the characters peculiar to his individuality, we can discover certain typical signs, some of which betray his nationality and others relate to his family. These typical signs are to be encountered not only in his physical organization, but are also found in his moral idiosyncrasies, and, if tradition is of any force as regards manners and customs, inheritance is certainly of great value as relates to the tastes and habits. It is, in fact, manifested in the transmission from generation to generation of the most inveterate maladies, before which art is obliged to confess its

Renaudin's exposition.

[1] Ann. Hyg. et Lég. Méd. xi. 2d ser. 312. See Rogers on Hereditary Nervous Diseases, Papers Med. Leg. Soc., N. Y. 1874.

[2] Ann. Hyg. xiv. 442.

[3] Ibid. 443.

[4] Practice of Medicine, by Prof. G. B. Wood, M.D., vol. ii. p. 672, Phila. 1849. See report of Thute's Case, 18 Journ. Ment. Sci. 450.

weakness; and it is with difficulty prophylactic measures ward off the sad result. In mental alienation, also, experience furnishes us daily proofs of this transmission, of which it is essential to study the mode.

"The question whether this transmission is direct, or results from a predisposition whose development is due to the influence of an occasional cause, or, in other words, whether by itself it is an essential condition of causality, is no longer doubtful, and we now possess numerous examples not only of hereditary transmission, but also of an hereditary accumulation of the morbid predispositions. This is particularly the case in families where wedlock is limited to a small circle of fortune and social fitness. The royal families of many countries have not escaped this law. We see generations of insane succeed each other with an unyielding regularity, and there are families which in this relation seem pursued by a desolating fatality.

"Aside from idiocy and imbecility, which show themselves a short time after birth, the predisposition does not ordinarily show itself until the individual has reached a certain development—that is to say, when all the conditions of causality are reunited. This native predisposition does not suppose that those that preceded were insane; it depends, above all, upon the conditions in which they are placed and which react upon the phases of their existence. This predisposition is also progressive from one generation to another; and it is in this manner that great social commotions and certain epidemics contribute to the production of insanity, in leaving after them deep distress or in producing a disordered exaltation.

"All causes capable of altering the public health have a marked influence upon the immediate production of insanity or upon the hereditary transmission of its predisposition. The unhealthiness of dwellings and insufficiency or bad quality of food are so many circumstances influencing its production, and to which municipal governments should pay serious attention. It is on account of these and other analogous causes that cretinism and idiocy are endemic in certain localities, and that this influence is exercised not only on natives, but also upon those establishing themselves there.

"The mode of life of the parents, and the diseases they have had are no less efficacious in producing a predisposition to mental unsoundness. If insanity has existed in those that preceded, the

chances of a direct transmission are much more probable. This predisposition is sometimes so marked as to be in some measure the only cause. Among the circumstances most likely to produce an hereditary predisposition, we should mention drunken habits in the parents.[1] Many indeed, are the cases of idiocy and imbecility which owe their situation to this cause. Many generations thus suffer the punishment inflicted for the faults of one alone.

"The hereditary predisposition presents numerous varieties in its evolution. Many members of the same family are free from mental unsoundness; and one only becomes insane. In another the inheritance shows itself from mother to daughter as a consequence of parturition. This predisposition sometimes consists only in the peculiarity of character, which drags a man towards a precipice which conducts irresistibly to insanity."[2]

§ 367. Dr. Thomson, surgeon to the General Prison of Scotland, as cited by Dr. Maudsley,[3] gives in this connection the result of his extensive experience in a very striking shape. He declares that crime is in a large degree hereditary in families;[4] though this, it ought to be observed, is to be in many cases accounted for by the parents' bad example, and the evil associations of home. But independently of this, there are certain nervous and physical disorders, traced by this experienced observer, which cannot be so explained. Thus epilepsy, dipsomania, spinal deformities, stammering, imperfect organs of speech, club-feet, cleft palates, harelip, deafness, paralysis, and similar marks of physical degeneration, are specified as accompanying this hereditary line of abnormal guilt.

Crime hereditary.

[1] See, Alcohol, its Action and Uses, by Dr. Richardson. Lond., 1875. Asto failure of English legislation to restrain drunkenness, see an article in the Edinburgh Review (Oct.–Dec. 1879), p. 134.

[2] Etudes Medico-Psychologiques, par L. F. E. Renaudin. Chap. ii. p. 33. Paris, 1854. See "The Jukes," by R. L. Dugdale, 3d ed., N. Y. 1877.

[3] Body and Mind, London, 1870, p. 66.

[4] It was stated in 1881 that in the Eastern Penitentiary in Philadelphia, in that year, there were six convicts of one family; that at the same time there were four brothers of one family, and three of another family, imprisoned as convicts in that institution. Lucas, in L'Hérédité Naturelle, tells us that 279 cases of mental disease, accompanied more or less with moral obliquity, were to be traced to the mother. Sir Henry Holland, in his medical notes, informs us that Oxford, who fired at the queen, his father, and grandfather, all believed themselves to be St. Paul.

§ 368. Dr. Maudsley, to this and similar statements, adds: "I could not, if I would, in the present state of knowledge, describe accurately all the characteristics of the insane neurosis, and group according to their affinities the cases testifying to its influence. The chief concern now with its morbid peculiarities is to point out, first, that they mark some inherited fault of brain-organization; and, secondly, that the cause of such fault is not insanity alone in the parent, but may be other nervous disease, such as hysteria, epilepsy, alcoholism, paralysis, and neuralgias of all kinds. Except in the case of suicidal insanity, it is not usual for the parent to transmit to the child the particular form of mental derangement from which he has suffered; insanity in the parent may be epilepsy in the child, and epilepsy in the parent, insanity in the child; and in families where a strong tendency to insanity exists, one member may be insane, another epileptic, a third may suffer from severe neuralgia, and a fourth may commit suicide." Nervous disease, declares this eminent physician, is a veritable Proteus, sometimes skipping generations, and sometimes displaying itself in several contemporaneous members of one family in the most capricious and dissimilar forms.[1]

Nervous diseases may transmit mental derangement.

§ 369. In regard to *idiocy*, the facts are very striking. "Suffice it to say," we are told by Dr. S. G. Howe, chairman of the Massachusetts State Idiocy Commission, in a very luminous report, submitted in 1848,

Excesses of parents often the cause of idiocy.

[1] See also on this point essays by Dr. Stephen Rogers, in 3 Hammond's Journ. Psych. Med. 625; Papers Med. Leg. Soc. N. Y. (1874) p. 74; and by Dr. O'Dea, in 4 Journ. Psych. Med. 28. See, generally, the West Riding Asylum Reports. It was stated in a Boston daily paper of April, 1872, that a gentleman was then sometimes seen in New York, the pupils of whose eyes instead of being round are of the form of a key-hole. He has a son with precisely the same anomaly. In consequence of the aperture being very large, and without a muscular apparatus for contracting according to the quantity of light the organ can bear with impunity, as in ordinary eyes, they are obliged to knit their brows and partially curtain their eyes by closing the lids, otherwise the retina would be overpowered and perhaps paralyzed by impinging rays. Albinos transmit the congenital defect of their own optics to their children in the proportion of one to about five. That is, in a family of six children one will generally have red pupils. They see best in an obscure light, because the pigment which absorbs all the rays not required for distinct vision is wanting in them. Rabbits, especially white ones, are albinos, and so are many varieties of parrots.

"that, out of 420 cases of congenital idiocy examined, some information was obtained respecting the condition of the progenitors of 359. Now, in all these 359 cases, save only four, it was found that one or the other or both of the progenitors of the unfortunate sufferers had, in some way, widely departed from the normal condition of health, and violated the natural laws."

"We have no doubt," says a late eminent physician, "that various immoral and vicious practices ought to be ascribed to insanity. When periodic insanity has shown itself in a large family, it is probable that some members of the family will evince a propensity to thieving or swindling. And, when more children than one of the same parents, bursting through all the restraints imposed by carefully-instilled principles and established habits, engage in swindling transactions, it will often appear, upon inquiry, that insanity has generally broken out in that family."[1] And the same high authority tells us that in families where insanity prevails with the pregenitors, he has known two, three, or four children of the same parents become deranged. One instance in particular he dwells upon, in which, among a family of twenty persons, the children of a brother and of two sisters, *ten* were afflicted with insanity.[2]

§ 370. An interesting table, originally published in the London Quarterly Review,[3] and indorsed by Dr. Winslow,[4] will show the importance of this inquiry.[5]

[1] Essays on Partial Derangement in Supposed Connection with Religion. By the late John Cheyne, M.D. Dublin, 1843.

[2] As to the marriage of near relatives, see The Marriage of Near Kin, A. H. Huth, London, 1875; articles in 48 Westminster Rev. 299; Fortnightly Rev., July, 1875.

[3] No. 163.

[4] Lectures, etc., 150. See Rush on the Mind, 46, where this point is examined.

[5] On the general subject of the heredity of special moral and intellectual traits, see "Hereditary Genius, an inquiry into its laws and consequences, by Francis Galton, F.R.S., etc., 8vo., London, 1869." The following observations of Mr. Darwin are directly in point:—

"When we reflect that certain extraordinary peculiarities have thus appeared in a single individual out of many millions, all exposed in the same country to the same general conditions of life, and, again, that the same extraordinary peculiarity has sometimes appeared in individuals living under widely different conditions of life, we are driven to conclude that such peculiarities are not directly due to the action of the surrounding conditions, but to unknown laws acting on the

§ 371. Dr. Steinau, in his Essay on Hereditary Disease, mentions a very interesting incident bearing on this point.[1]

Case of hereditary criminal propensity.

"When I was a boy, there lived in my native town an old man, named P——, who was such an inveterate thief that he went in the whole place by that name; people speaking of him used no other appellation but that of The Thief, and everybody then knew who was meant. Children and common people were accustomed to call him by that name, even in his presence, as if they knew not his other name; and he bore it to a certain degree with much good-natured forbearance. It was even customary for the tradesmen and dealers, who frequented the annual fair in the place, to enter into formal treaty with him, that is, they gave him a trifling sum of money, for which he engaged not only not to touch their property himself, but even to guard it against other thieves. A son of this P——, named Charles, afterwards lived in B—— during my residence there. He was respectably married, and carried on a profitable trade which supported him handsomely. Still, he could not help committing many robberies quite without necessity, and merely from an irresistible

organization or constitution of the individual; that their production stands in scarcely closer relation to the condition than does life itself. If this be so, and the occurrence of the same unusual character in the parent and child cannot be attributed to both having been exposed to the same unusual conditions, then the following problem is worth consideration, as showing that the result cannot be due, as some authors have supposed, to mere coincidence, but must be consequent on the members of the same family inheriting something in common to their constitution. Let it be assumed that in a large population a particular affection occurs on an average in one out of a million, so that the *à priori* chance that an individual taken at random will be so affected is only one in a million. Let the population consist of sixty millions, composed, we will assume, of ten million families, each containing six members. On these data, Professor Stokes has calculated for me that the odds will be no less than 8,333,000,000 to one that in the ten million families there will not be even a single family in which one parent and two children will be affected by the peculiarity in question. But numerous cases could be given, in which several children have been affected by the same rare peculiarity with one of their parents; and in this case, more especially if the grandchildren be included in the calculation, the odds against mere coincidence become something prodigious, almost beyond calculation." See also Mr. Galton's later work—English Men of Science: Their Nature and Nurture. Lond. 1874.

[1] See Pathological and Philosophical Essay on Hereditary Disease, p. 19, No. 21.

inclination. He was several times arrested and punished; the consequence was that he lost his credit and reputation, by which he was at last actually ruined. He died while still a young man, in the house of correction at Sp——, where he had been confined for his last robbery. A son of this Charles, and grandson of the above-mentioned and notorious P——, in my native town, lived in the house where I resided. In his earliest youth, before he was able to distinguish between good and evil, the disposition to stealing, and the ingenuity of an expert thief, began already to develop themselves in him. When about three years old, he stole all kinds of eatables within his reach, although he always had plenty to eat, and only needed to ask for whatever he wanted. He therefore was unable to eat all that he had taken; nevertheless he took it, and distributed it among his play-fellows. When playing with them, some of their playthings frequently disappeared in a moment, and he contrived to conceal them for days, and often for weeks, with a slyness and sagacity remarkable for his age. When about five years old, he began to steal copper coins; and at the age of six years he began to know something of the value of money, and he looked out for silver pieces; and in his eighth year he only contented himself with larger coins, and proved to be, on public promenades, an expert pickpocket. He was early apprenticed to learn a trade, but his master, being continually robbed by him, soon dismissed him. This was the case with several other tradesmen, till at last, in his fourteenth year, he was committed to the house of correction."

§ 372. "Nothing," says Mr. Hill, in his work on crime, "has been more clearly proved than that crime is, to a considerable extent, hereditary—crime appearing, in this respect, greatly to resemble pauperism, which, according to the evidence of the poor-law commissioners, often proceeds from father to son in a long line of succession."[1] He adduces numerous cases in confirmation of the fact. One of the most striking applies to the families of three brothers, containing together fifteen members. Of these, no fewer than fourteen were utterers of base coin, while the fifteenth, who appeared to be

But such hereditary propensity without insanity no defence.

[1] Crime; its Amount, Causes, and Remedies. By Frederick Hill, Barrister-in-law, late Inspector of Prisons, 1853, p. 55. See an article in 15 Journ. Ment. Sci. 487.

an exception to his kindred, was, at length, detected in setting fire to his own house, which he had insured for four times its value. "Supposing each of those employed in uttering base coin to have passed only one piece a day, and to have had a career of five years' duration (which there is reason to believe is about the average), no fewer than twenty thousand offences might have been prevented by removing the three brothers permanently from society before they became fathers of families." The disposition to commit crime is often unquestionably an incurable form of insanity; hence, we read of persons who are all their lives criminals, and only terminate one period of imprisonment to recommence another. The case of a woman is cited by Mr. Hill, who continued in a career of crime for twenty-five years; and that also of another woman, fifty years of age, who had already been in prison sixty-seven times. Furthermore, he refers to another example, of a woman who had been in the police cells, in Edinburgh, at least one thousand times, chiefly for acts of violence.[1] But it should not be forgotten that, unless there be hereditary insanity, mere hereditary tendency to crime is no more a defence to crime than is the doctrine of the hereditability of sin.

(*b*) *Legally.*

§ 373. In a *legal* as well as a *psychological* view, the relevancy of evidence of hereditary taint has been very ably shown by a late

[1] Ibid. See The Jukes, by R. L. Dugdale, N. Y. 1877. This careful and painstaking research into the history of a celebrated family of criminals in New York is deserving of attention. The author considers the remarkable facts that he has developed to prove that crime, intemperance, prostitution, pauperism, illegitimacy, and the like are all hereditary. Of the 1200 descendants and collateral relatives of the five sisters who founded the family, 140 were criminals and offenders (this is, says the author, a low and imperfect estimate), 280 were paupers, 60 were habitual thieves, 7 murderers, 50 common prostitutes (40 of these being specifically diseased); and the cost to the state in seventy-five years inflicted by this single family is estimated by the author at $1,308,000, "without reckoning the cash paid for whiskey, or taking into account the entailment of pauperism and crime of the survivors in succeeding generations, and the incurable diseases, idiocy and insanity, growing out of this debauchery, and reaching further than we can calculate." Of 540 persons related by blood to the Jukes, there were 84 harlots, 60 criminals, 106 bastards, 65 diseased (29 syphilitic), and 95 paupers.

Legally, evidence of hereditary insanity admissible.

eminent judge,[1] whose capacity as a mental observer was not less than his ability as a judge. On the trial of the issue, the object of which was to determine the validity of the will of Captain Arrowsmith, the evidence was that the deceased was a retired mariner who had attained a competence; the plaintiff was his sister, his heir by descent, as the last of her father's issue; and the defendant, his housekeeper, was his devisee. The fact in contest was his sanity. There was no evidence of fraud or imbecility; but the plaintiff's witnesses testified as to acts of sudden and unprovoked passion, violence, wildness, extravagance, and eccentricity; and, in order to corroborate the inference from them, her counsel offered the deposition of Susan Arrowsmith, the widow of one of the testator's brothers, that the testator's father was insane towards the close of his life; that one of the testator's two uncles, on the father's side, was insane, and the other imbecile; that his two aunts on the same side, and their children, were insane; that a son of one of them is in a madhouse; and that her own husband was mentally disqualified before his death. The admission of the deposition was opposed, on the ground that the legitimate inquiry was into the state of the testator's mind, not that of another; and that it did not follow, that, because the testator's father and his collateral relations were insane, he must have been so too. The point was elaborately argued on principle and authority, but the chief justice said: "I admit the deposition without hesitation, notwithstanding the dicta of Mr. Shelford[2] and Mr. Chitty,[3] that it is an established rule of law not to admit proof of insanity in other members of the family in civil or criminal cases. Established! When, where, and by whom? Certainly not by the house of lords, in McAdam *v.* Walker,[4] the only case cited for it, for the question there was avowedly dodged. That high court would not shock common sense by affirming the order of the Scotch court of session; nor would it gratuitously reverse it, when the decision could be safely put on another ground. The authority of a judgment appealed from, and left in dubio, cannot be very great. Sir Samuel Romilly's argument against the evidence was rested on the fecundity and interminableness of collateral issues; and Mr. Chitty

[1] Gibson, C. J.
[2] Treat. on Lunacy, 59.
[3] Med. Jurisp. 355.
[4] 1 Dows. Par. Ca. 148.

seems to have had a glimpse of the same idea, when he said the course is to confine the evidence to the mental state of the party. But every new fact, though it open a new field of inquiry, is not collateral. It may bear directly on the fact in contest; and where it does so, it is not in the power of the court to shut it out. A collateral issue is such as would be raised by allowing a party to put a question to a witness, on cross-examination, in regard to a fact palpably unconnected with the cause, in order to afford an opportunity to discredit him by contradicting him; but does not proof of hereditary madness bear directly on the condition of the mind, which is the subject of investigation? What if the point had been ruled by the chancellor and law judges in the house of lords? Profoundly learned in the maxims of law, they were profoundly ignorant of the lights of physiology; yet, free from the presumptuousness of which ignorance is the foster-father, they refused to rush on the decision of a question to which they felt themselves incompetent. Mr. Chitty fancifully puts the solution of questions of insanity on the doctrine of legal presumptions. 'As the imputation,' he says, 'is contrary to the natural presumption of adequate intellect, the deficit should be established by *direct* and *positive* evidence, and not merely by conjectural or probable proof.' If that be law, a question of insanity is the only one in which positive evidence is required, and circumstantial evidence to corroborate is rejected. Why is evidence of an old grudge admitted against a prisoner as a remote proof of malice, if the remote proof of hereditary insanity may not be given by him to rebut it; and why should the presumption of sanity be allowed to overbear the presumption of innocence, the strongest of them all? I admit that hereditary insanity will not itself make out a case for or against a member of the family; but to say that it may not corroborate what Mr. Chitty calls direct and positive proof, without defining it, staggers all belief. In a measuring cast it ought to prevail. He says harsh conduct, bursts of passion, or displays of unnatural feeling will not, *of themselves*, establish insanity. Be it so. But, because the springs of such actions are concealed, are they never to be laid bare, and shown to be seated in the blood? When it is admitted by Mr. Chitty and Mr. Shelford themselves, that insanity is a descendable quality, they give up the argument. There can be nothing unreasonable in referring wild, furious, and unnatural actions, not otherwise accounted for, to the aberrations

of a mind, the reflux of that of a crazy father. Mr. Taylor, a distinguished lecturer on medical jurisprudence in the Guy's Hospital, London, says that 'in making a diagnosis of a case of insanity, the first question put is commonly in reference to the present or past existence of the disorder in other members of the family. There can be no doubt, from the current testimony of many writers on insanity, that a disposition to the disease is frequently transmitted from parent to child through many generations. M. Esquirol has remarked, that this hereditary taint is most common of all cases to which insanity can be referred.'[1] M. Esquirol was, in 1838, and perhaps is still, the principal physician to the hospital for the insane at Charenton, in France, and a member of the Royal Academy of Medicine at Paris. His tables of insanity are held in high repute by not only the physicians of France but of Europe. Well might Mr. Taylor say that these things ought to be borne in mind by medical jurists. The knowledge attained by men, of a subject which they have grappled all their lives, ought surely to prevail against knowledge gleaned from the hornbooks of a profession to which the gleaners did not belong. Strange that a source of information open to every one else should be closed to those who are to pass on the fact. Every man has observed that there are families through which insanity has been handed down for generations; and why should the probability of hereditary madness be excluded, when probabilities in other cases are weighed, especially when it is known that a proclivity to theft, intemperance, lying, cheating, and almost all other moral vices, are as transmissible as gout, consumption, deafness, blindness, and almost all other constitutional diseases? It is supposed by the million that insanity is a disease of the mind, not of the body. Ridiculous! If it were, it could never be cured; for the mind cannot take physic, or be separately treated; yet the statistics of the insane exhibit a great number of cures, and the time is fast coming when insanity will be considered the most manageable disease that flesh is heir to. An objection to an inquisition which does not disclose the specific nature of the ancestor's infirmity might stand in a different light; but testimony which brings the fact of madness home to him ought to be received like evidence of family likeness, which, though less reliable, was allowed to be

[1] Taylor on Med. Jurisp. 502.

corroborative proof of paternity in the Douglas Peerage case, in 1767, and again in the Townsend Peerage case, in 1843. Lord Mansfield said, in the former, that he had always considered likeness as an argument of a child being the son of a parent; that a man may survey ten thousand people before he sees two faces exactly alike, and that in an army of a hundred thousand men, every man may be known from another; that if there should be a likeness in feature, there may be a difference in the voice, gesture, or other characters: whereas family likenesses run generally through all of these; for that in everything there is a resemblance. as of feature, voice, attitude, and action. Might he not have added the diathesis of the brain? He doubtless might, if the point had been mooted. In prosecutions for bastardy, the practice in the quarter sessions was, in my day, not exactly to give the child in evidence, but to put it before the jury, sometimes by the prosecutor, and sometimes by the putative father. But ancestral irregularity in the action of the brain is more frequently transmitted than any resemblance in form or feature; and it is difficult to imagine an objection to evidence of it for purposes of corroboration."[1]

So in England.

§ 374. Taylor thus sums up the recent English cases on this point: "In the case of Reg. *v.* Ross Touchet, 1844, tried and acquitted on the ground of insanity, for shooting a man, Maule, J., held that evidence that the grandfather had been insane may be adduced, after it had been proved by medical testimony that such disease is often hereditary in a family. It was also admitted in Oxford's case, the prisoner having been here tried for shooting at the queen.[2] This kind of evidence has, however, been frequently rejected, and it is not admitted in the law of Scotland.[3] There can be no doubt, from the concurrent testimony of all writers on insanity, that a predisposition to the disease is frequently transmitted from parent to child through many generations. The malady may not always show itself in such cases, because the offspring may pass through life without being exposed to any exciting cause; but in general it readily supervenes from very slight causes."[4]

[1] Smith *v.* Kramer, 1 Am. Law Reg. 353.

[2] Law Times, Oct. 26, 1844.

[3] Gibson's case, Edinburgh, Dec. 1844.

[4] Taylor's Med. Jur., p. 555.

§ 375. Evidence of this class is not to be limited to the immediate relatives of the patient. Thus in Andrews' case, before the supreme court of Massachusetts, in 1868, the court admitted evidence of the insanity of the collateral issue of a common ancestor of the defendant three generations back.[1] It is clear that evidence of mental unsoundness on the part of a brother or sister of the person whose competency is in question is admissible.[2]

Evidence may be given of insanity of collateral relation.

§ 376. It has been ruled, indeed, in North Carolina, that where hereditary insanity is offered as an excuse for crime (the case before the court was murder), there must be proof that the insanity was notorious, and of the same species as that with which other members of the family have been afflicted.[3]

It need not be notorious

But this decision cannot be sustained. Insanity, it has been well said, is protean. Sometimes it may be so concealed that it may escape the knowledge of all but the closest observers. Often, as has been seen, it changes its form from time to time in the same individual; and when passing from parent to child it almost always varies its type.

[1] Andrews' trial, pamphlet, p. 135. Wh. Crim. Law, § 65; R. *v.* Tucket, 1 Cox C. C. 103; R. *v.* Oxford, 9 C. & P. 525; Smith *v.* Kramer, 1 Am. L. Rev. 353; Bradley *v.* State, 31 Ind. 492; State *v.* Felter, 25 Iowa, 67; Com. *v.* Rogers, 7 Met. 500. See also Baxter *v.* Abbott, 7 Gray, 81, where the insanity of uncles was allowed to be shown, and Com. *v.* Rogers, 7 Metcalf, 500. So in Christiana Edmunds's case, in London, Jan. 1872, the defendant appears to have been permitted to give proof of this kind without limit as to degree of relationship. The law is thus stated by Judge Thomas in Baxter *v.* Abbott, 7 Gray, 81.

"We think the practice has been to admit evidence of insanity in the family. We think the practice is right in principle. It rests upon the ground of the hereditary character of insanity; that a predisposition to the disease is frequently transmitted from parent to child. With such predisposition the malady may not show itself in the child, for the child may not be exposed to any exciting cause. But, with such hereditary taint, insanity *supervenes from slight causes*—causes apparently wholly inadequate to affect the mind without the predisposition. In making a diagnosis of such a case, we suppose that, among the first questions which would be put, would be the question whether the parents of the patient were or had been insane. With the fact that father or mother or either of them had been insane, that the *insanity had appeared in them at about the same age, and in the same form, its existence in the child is more probable, and is believed on less perfect evidence.*" S. P. People *v.* Smith, 31 Cal. 466.

[2] People *v.* Garbutt, 17 Mich. 9.

[3] State *v.* Christmas, 6 Jones (N. C.) 471.

§ 377. But the proof of hereditary insanity can only be admitted as cumulative evidence, and the insanity of ancestors is, by itself, no defence.[1] Evidence that certain causes might induce insanity is not admissible without laying or offering to lay a basis of proof to show that insanity actually existed.[2]

Insanity of relatives no defence, *per se.*

4. *Conversation and deportment.*

§ 378. The general questions relating to feigned insanity are distinctively hereafter noticed.[3] One or two cases will be sufficient to show the importance of accurate observation in this respect.

Insanity often difficult to detect.

"A parish officer, from the neighborhood of Middleton, England, took a lunatic to the asylum, pursuant to an order signed by two magistrates. As the man was respectably connected, a gig was hired for the purpose, and he was persuaded that it was merely an excursion of pleasure on which he was going. In the course of the journey, however, something occurred to arouse the suspicions of the lunatic with respect to his real destination; but he said nothing on the subject, made no resistance, and seemed to enjoy his jaunt. When they arrived at Lancaster, it was too late in the evening to proceed to the asylum, and they took up their quarters for the night at an inn. Very early in the morning the lunatic got up and searched the pockets of the officer, where he found the magistrate's order for his own detention, which, of course, let him completely into the secret. With that cunning which madmen not unfrequently display, he made the best of his way to the asylum, saw one of the keepers, and told him that he had got a sad mad fellow down at Lancaster, whom he should bring up in the course of the day, adding: 'He's a very queer fellow, and he has got very odd ways. For instance, I should not wonder if he was to say I was the madman, and that he was bringing me: but you must take good care of him, and not believe a word that he says.'

[1] Snow *v.* Benton, 28 Ill. 306. Such evidence, it has been held, is not competent until evidence of the defendant's own insanity has been given. Laros *v.* Com., 84 Pa. 200. See People *v.* Pine, 2 Barb. 566.

[2] Sawyer *v.* State, 35 Ind. 80; Bradley *v.* State, 31 Ind. 492.

[3] See *infra*, §§ 443–460; and as to change of character and disposition, see *infra*, § 390.

The keeper of course promised compliance, and the lunatic walked back to the inn, where he found the officer still fast asleep. He awoke him, and they sat down to breakfast together. 'You're a lazy fellow to be sleeping all day; I have had a long walk this morning,' says the lunatic. 'Indeed,' says the officer, 'I should like to have a walk myself after breakfast; perhaps you will go with me?' The lunatic assented, and after breakfast they set out, the officer leading the way toward the lunatic asylum, intending to deliver his charge; but it never occurred to him to examine whether his order was safe. When they got within sight of the asylum the lunatic exclaimed, 'What a fine house that is!' 'Yes,' said the officer, 'I should like to see the inside of it.' 'So should I,' observed the lunatic. 'Well, I dare say they will let us through—I will ask,' was the response. They went to the door; the officer rang the bell, and the keeper whom the lunatic had previously seen made his appearance, with two or three assistants. The officer then began to fumble in his pockets for the order, when the lunatic produced it, and gave it to the keeper, saying, 'This is the man whom I spoke to you about. You will take care of him; shave his head, and put a strait waistcoat on him.' The men immediately laid hands on the poor officer, who vociferated loudly that the other was the madman, and he the officer; but, as this only confirmed the story previously told by the lunatic, it did not at all tend to procure his liberation. He was taken away, and became so indignantly furious that the strait waistcoat was speedily put upon him, and his head was shaved, *secundum artem*. Meanwhile, the lunatic walked deliberately back to the inn, paid the reckoning, and set out on his journey homeward. The good people in the country were, of course, surprised on seeing the wrong man return; they were afraid that the lunatic, in a fit of frenzy, had murdered the officer, and they asked him with much trepidation what he had done with Mr. Stevenson. 'Done with him?' said the madman, 'why, I left him at the Lancaster Asylum, as mad as a fury!' which, indeed, was not very far from the truth; for the wits of the officer were wellnigh upset by his unexpected detention and subsequent treatment.

"Further inquiry was forthwith made by his neighbors, and it was ascertained that the man was actually in the asylum. A magistrate's order was produced for his liberation; and he returned

home with a handkerchief tied round his head in lieu of the covering which nature had bestowed upon it."[1]

§ 379. "I was requested," says Dr. Winslow, "to see a gentleman who was said to be suicidally insane. Upon inquiry, I ascertained from good authority that under the influence of the most distressing hallucinations he had attempted to hang himself. The patient firmly, earnestly, and apparently with great truthfulness, resolutely and repeatedly denied the fact. He declared it was an invention—a pure creation of the imagination, originating with the family; that he was happy, subject to no depression, had a strong wish to live, and great fear of death. I examined him, in conjunction with another physician, and neither of us could seize hold of the salient point, or satisfy himself that the man was actually insane. But, we asked ourselves, what motive could his family have for thus misrepresenting the facts of the case? We felt quite assured, from the character of the evidence presented, that an attempt at suicide had been made; but the patient, with an ingenuity which would have reflected credit upon a *nisi prius* lawyer, parried with great skill all the questions, and gave such prompt and happy replies to our anxious interrogatories, that we were compelled to admit ourselves, for a time, perfectly defeated. By a course of conversation I drew the gentleman's thoughts into a different channel; and, whilst my attention was directed apparently elsewhere, I kept a close watch upon his movements. I perceived, as I imagined, some kind of instrument projecting from his pocket. He perceived that my eyes were directed to this, and he immediately expressed a wish to leave the apartment. I at once said, 'I cannot permit you to do so until I know what you have concealed in your trowsers pocket.' He at once manifested signs of embarrassment and excitement, and, rising rapidly from his seat, endeavored to rush out of the door. He was immediately prevented from doing so, and his pockets emptied, and a razor discovered. In his pocket-book a letter was found, addressed to the coroner, intimating to him that he was pursued by an evil spirit, and this impression had driven him to commit an act of self-destruction. Fortunately for our own reputation and the

Often only detected by outside circumstances

[1] Manchester (England) Guardian.

patient's life, this providential discovery was made.[1] It may be necessary to see and examine the patient on more than one occasion before the physician is satisfied as to the actual state of his mind. In cases of doubtful character, I would suggest that this course should invariably be adopted, taking the necessary precaution to recommend close vigilance during the interregnum. I suggest this course, in consequence of my being acquainted with the case of a lady, whose removal from home was for a few days temporarily postponed, in compliance with the cautious and judicious advice of the medical man, who admitted that he could not detect, according to his apprehension, sufficient evidence of insanity to justify him in signing the certificate. During the interim she succeeded in destroying herself. In a few instances we are justified in partially acting upon the representations of the family and friends of the alleged lunatic. If a delusion be detected, it must be referred to; and, if the patient has committed any overt act of violence, or manifested a suicidal disposition, it is our duty to refer to these facts, guarding ourselves by stating that we derive such information from parties immediately around the patient. It is important in all cases to specify the character of the existing delusion. The expression of a belief in the fact of delusive ideas, and of the presence of abstract insanity without a specification of facts, renders a medical certificate invalid. I have often seen certificates worded to this effect: 'I have formed my opinions from the fact of the party being insane'—'being under delusions'—'being excited'—'being violent.' These generalizations should be carefully avoided; the more concise the account of the patient's condition, the closer

[1] "It is only in having," says Orfila, "an acquaintance with the whole life of an individual, in weighing and comparing every fact, that in some cases, we can pronounce with certainty upon his actual moral state. It is in interrogating the past that we acquire a knowledge of the present." The same author also states, that, when an opinion is asked from physicians upon the actual state of an accused person, they ought, in the examination of his previous conduct, to understand what act is imputed to him, if that should be necessary to influence their opinion. In a report, they should not confine themselves to a simple opinion upon the state of the person who is the subject of it, but, of necessity, should go into details upon the facts observed, in order that the same piece may be submitted to the examination of new experts. The employment of all the means indicated does not always lead to a positive result, and sometimes we are to remain in doubt.—*Méd. Lég.*, Orfila, tome i. p. 400. Paris, 1848.

will it be in unison with the expressed wish of the commissioners in lunacy. The record of one clear and unmistakable delusion is quite sufficient for all legal purposes. But cases do occur where no delusion can be detected, and yet confinement may be absolutely necessary. Under such circumstances it is the duty of the medical man to enter more into detail as to the facts of the case. Perhaps I may be excused for suggesting, that, in every instance of this kind, the parties should keep copies of their certificates."[1]

Insanity sometimes only apparent on one topic.

§ 380. A man mentioned by Pinel, who had been for some time confined in the Bicêtre, was, on the visitation of a commissary, ordered to be discharged as perfectly sane, after a long conversation in which he had conducted himself with the greatest propriety. The officer prepared the *procès verbal* for his discharge, and gave it to him to put his name to it, when he subscribed himself Jesus Christ, and then indulged in all the reveries arising from that delusion. Lord Erskine gives a very remarkable history of a man who indicted Dr. Monro for confining him without cause in a madhouse. He underwent the most rigid examination, by the counsel of the defendant, without discovering any appearance of insanity, until a gentleman came into court who desired a question to be put to him respecting a princess with whom he had corresponded in cherry-juice. He immediately talked about the princess in the most insane manner, and the cause was at an end. But, this having taken place in Westminster, he commenced another action in the city of London, and on this occasion no effort could induce him to expose his insanity; so that the cause was dismissed only by bringing against him the evidence taken at Westminster. On another occasion, Lord Erskine examined a gentleman who had indicted his brother for confining him as a maniac, and the examination had gone on for great part of a day without discovering any traces of insanity. Dr. Sims then came into court, and informed the counsel that the gentleman considered himself as the Saviour of the world. A single observation, addressed to him in this character, showed his insanity, and put an end to the cause. Many similar cases, says Abercrombie, are on record. Several year ago, a gentleman in Edinburgh, who was brought before a jury to be cognosced, defeated every attempt of

[1] Winslow on Medico-Legal Ev. 153.

the opposite counsel to discover any traces of insanity, until a gentleman came into court, who ought to have been present at the beginning of the case, but had been accidentally detained. He immediately addressed the patient by asking him what were the latest accounts from the planet Saturn, and speedily elicited ample proof of insanity.[1]

§ 381. M. Orfila states, that deranged persons who are conscious of their condition, and who yet preserve some control over themselves, will answer correctly all questions that are addressed to them, and will not betray their condition if they have an interest in concealing it.[2]

Or entirely concealed.

§ 382. Mr. David Paul Brown gives us the following illustration of this same craftiness: M., having written a letter from the asylum, made up of patches of Latin, Greek, French, and German, and manifesting most clearly a disordered mind, upon escaping from his confinement desired counsel to institute an action for false imprisonment, against the managers. "I shall do no such thing," said the lawyer (handing him the letter); "look at that, and tell me whether a sane man ever wrote such a letter." Upon which, bursting into a laugh, the madman said, "That indeed does look as if I were insane; but I wrote it purposely in that way, because I knew if it had been reasonable, and the managers had opened it, as they always do, they never would have allowed it to reach its address."[3]

Instances of craftiness in lunatics.

§ 383. Lord Chancellor Loughborough once ordered a man to be brought before him, against whom his heirs wished to take out a commission of lunacy. He examined him and put various questions to him, to which he made the most pertinent answers. "This man mad!" thought he, "verily he is one of the ablest men I ever met with." Toward the end of the examination, however, a little scrap of paper was put into his hands on which was written "Ezekiel." This was enough for such a shrewd and able man as his lordship. He took his cue. "What fine poetry," said the chancellor, "is in Isaiah!" "Very fine," replied the man, "especially when we read in the original Hebrew." "And how well Jeremiah wrote!"

[1] Abercrombie on the Intellectual Powers, pp. 253, 254; see also §§ 86–92.

[2] Méd. Lég., M. Orfila, tome i. p. 396. Paris, 1848.

[3] 2 Brown's Forum, p. 478.

"Surely," said the man. "What a genius, too, was Ezekiel!" "Do you like him?" said the man; "I'll tell you a secret, I am Ezekiel!"

§ 384. Cunning may run coincidently with insanity for a long series of years, and may, in a certain stealthy furtiveness, be one of the forerunners of insanity. "This brings us to another phase," says the writer of an intelligent survey of the reign of George III., in the London *Spectator* of April 27, 1872, "in the character of George III. We have seen that Lord Waldegrave speaks of his want of frankness. *It is probable that the brooding temperament and indirectness of conduct which are among the least pleasing of George's characteristics were closely connected with the mental disease to which he had a constant tendency. Secretiveness and cunning are usually marked features in an organization so affected, and the suspiciousness of others and the strong and irrational likes and dislikes which are main operating causes in such a nature produce, as a necessary result, dissimulation and crafty underhand intrigue.* When George, then, found that his violent declarations and overbearing wilfulness produced no effect, he restrained his morbid impatience (although his reason on several occasions tottered and even temporarily succumbed under the effort), and endeavored to attain his ends by cunning watchfulness of opportunities. He acquiesced outwardly in the change of advisers and abandonment of cherished policy, and then set to work to undermine the position of the intrusive counsellers, and to thwart, as much as he could venture to do, the development of their plans. He intrigued, in fact, against the ministers he could not meet openly, and waited for the moment when he could safely dismiss them again with ignominy. Hence arose the political phenomenon which went under the name of 'The King's Friends'—a set of men who formed a backstairs anti-cabinet, the object of which was to employ the king's name and the influence of his personal sentiments in organizing an opposition to his ostensible cabinet advisers, both in parliament and in the country at large. It must not be supposed by this that there was any regularly constituted 'cabal,' or any precisely defined plan of operation for its guidance; but there were nearly always throughout the reign of George III. two or three men—generally not men of high ability, but busy, gossiping intriguers, who were

Cunning may be a forerunner of insanity.

irresponsible, and both unavowed and often disavowed agents in making known what the king's real wishes were. With the assistance of such men, and by a careful observation of the variations in the public sentiment, George achieved a success in his plans of personal government which, if we remember the relative position of the crown and parliament at the commencement of his reign, seems at first marvellous. In the course of this protracted struggle, the king had to undergo many mortifications and not a few seemingly fatal checks, but he always bent to the storm in time, and generally knew when and how long to maintain an inflexible position. Nothing but this superior cunning and adroitness could have saved him from a great civil convulsion such as that which destroyed his predecessors in this path of royal aggrandizement, Charles I. and James II. George III., however, had concentrativeness of action as well as persistence of purpose, and, however tortuous his paths were at times, the tone and direction of his policy were always consistent, and no one had ever cause to suspect him for a moment of having become a convert to Whig constitutional notions, although he might tolerate for a time Whig ministers, and even (as in the case of his concessions to the revolted American colonies and his ultimate acknowledgment of their independence) adopt Whig measures and Whig policy. This persistent uniformity of sentiment, suspended in action from time to time by the necessities of his position, but always reappearing again to the public eye, produced by degrees a great and lasting effect on the public mind."

Mr. A. amassed a large fortune in Philadelphia, in a few years, as a carriage builder. He had an extraordinary degree of skill, among other things, in poising and adjusting the springs and weights of a carriage, and in uniting, in remarkable perfection, beauty and lightness with strength. As his business increased, he would be occupied during large portions of the night, as he lay sleepless in his bed, by calculations as to how these adjustments could be best secured. In the spring of 1855, he engaged in real estate speculations, in which he speedily showed that his mind was becoming unbalanced. He negotiated, or pretended to negotiate, for a large and immensely valuable lot of ground, intimating that he expected it to be occupied by Queen Victoria in a visit that she was projecting. Then he turned his attention to live stock, taking measures to purchase a vast number of cows, on the plea, he said,

of an expected rise in the price of milk. His family petitioned for a commission of lunacy, which was granted, and the present writer was appointed commissioner. While the case was on hearing, it was agreed on both sides that to give every opportunity for recovery, as well as to secure greater certainty in the result, Mr. A. should be permitted to travel for a few months, under the charge of two parties in whom he personally had confidence. The experiment was made, and two remarkable facts were established. The first was that he was possessed by certain insane delusions, which destroyed his capacity for managing his estate. The second was that he was conscious that he was under watch, and that these delusions, if shown to exist, would lead to the pending trial being decided adversely to his sanity. Nothing could exceed the adroitness and tact with which, on the one hand, he pursued these delusions, and, on the other hand, sought to conceal or mask them from his attendants. It seems that, besides wanting to purchase all the live stock he met, he had a fancy that these creatures were rational. He accordingly addressed notes to "a gray mare," or "a black horse, which I met in such a place," and, in seeking to get these notes to their intended destination, he used the adroitness and finesse of a subtle diplomatist. Then, when the fact was discovered, he would laugh it off, with the utmost coolness, as a practical joke attempted by him on his guardians. When the case was brought up for a final hearing, he not merely went successfully through the test of a protracted and thorough examination, but cross-examined the witnesses himself, and made a long, able, and artful speech, in which he endeavored to explain away all the facts that admitted of a doubtful construction. As to those which were unequivocally irrational, he took a ground something like the following: "You know, gentlemen of the jury, being business men yourselves, how acutely one who has been immersed all his life in a business in which he delights, and of which he may be justly proud, must feel when suddenly dragged from that business, forced to compulsory idleness, and dogged by men who he knows are seeking to entrap him into something which will prove him a lunatic. *You* can easily see how, under such circumstances, a man might resort to *imaginary* business, such as the world resorts to in its fashionable sports and games, to fill the void of *real*. *You* can understand, also, how he might attempt practical jokes to see how

far the gullibility of his keepers may go, and, since they wish to stare, lay traps to give them something to stare at."

Notwithstanding this defence, which for coolness, coherence, and appropriateness the sanest advocate could with difficulty have excelled, Mr. A. was found by the jury to be a lunatic, and was remanded by the court to the Pennsylvania Hospital for the Insane. There his insanity became unrestrained and unmistakable; and a few weeks after, during the momentary absence of an attendant, he killed himself by cutting his throat.[1]

§ 385. Yet, notwithstanding this capacity for occasional concealment, the abnormal condition of lunatics will, if they are sufficiently watched, sooner or later break out.[2] "To the manifestation," says Griesinger, "of such (abnormal) desires, to the free disclosure of tendencies which are generally concealed, to certain morbid impulses, may be referred much of the peculiarity which distinguishes the conduct of the insane. Each has its analogy in healthy life, partly in those peculiar habits and caprices which are occasionally observed as curious appendages to great and energetic intellects (which form the materials of many anecdotes relating to learned men), partly in the directions of the will and modes of action of the passions and emotions. These in detail afford materials for numerous comparisons, and we find in the poets who dwell much on the emotional states numerous analogies by way of example.

But sooner or later detected.

"Thus, when the melancholic has the impulse to leave his home, and roam in the open air, because it appears too confined for him, and because he expects alleviation from his state of internal pain by outward disquiet and change, so the same appears in cases of real mental pain, where the sufferer spends his life in the open air, or even in distant lands, in the world, in order to recover internal calm by outward disquiet and restlessness. Eichendorff has well expressed this disposition in one of his well-known songs."[3]

The presumptions belonging to change of character and disposition are subsequently discussed.[4]

[1] See *infra*, §§ 457, 458.

[2] See *infra*, § 459.

[3] Griesinger's Mental Pathol., Syden. ed. (1867), § 47.

[4] *Infra*, § 390.

5. *Writings.*

Correspondence of the insane a valuable test.

§ 386. The method of testing conversation and conduct when a question of insanity arises is discussed at large under other heads. It is proper here to notice of what peculiar value *writings*, emanating from the supposed insane person, are as a criterion.

"Delusions are sometimes cunningly concealed for a length of time," says Dr. Winslow, "and, notwithstanding we are certain that they exist, no amount of ingenuity will induce the patient to disclose them, particularly if made aware of the object of our visit. I had been recently to see a lady whose insanity was manifested in a remarkable degree in her every action; but, after paying her several visits, I found it impossible to induce her to exhibit any one delusive impression or insane idea; but no sooner had I left the room than her conversation and conduct became outrageously insane. Many insane persons are able to talk with apparent rationality, but cannot write without exhibiting their insanity. I have examined recently one very remarkable case of this kind, in a clever, well-read, and intellectual woman, whom I had occasion to visit. I never could detect the slightest aberration of mind in her conversation, and yet almost invariably, upon my leaving, she placed in my hands a letter (which had been written previous to my calling) full of the most absurd extravagances and fancies; accusing strangers, myself, and members of her family of being engaged in deeply concocted conspiracy against her property and life. Several of these peculiar and interesting cases are recorded, and the medical man has been advised, with a view of obtaining an insight into the true condition of the mind, to open a correspondence with the supposed lunatic, upon the principle that few persons positively insane can, for any length of time, write without exhibiting their delusions, whatever amount of self-control they are able to exercise over their thoughts and morbid ideas during protracted conversation."[1]

Style and handwriting tests as well as contents.

§ 387. The value of letters or other writings, as tests of insanity, has been shown by abundant illustrations by Marcé, in a monograph on this particular topic.[2] To these might be added a series of cases, English and

[1] Winslow on Méd. Lég. Ev. 108.

[2] De la valeur des écrits des aliénés au point de vue de la sémilogie et de la Méd. légale, 1864.

American, in which the insanity of testators and of obligors has been in a large degree determined by the characters of written documents emanating from them. Nor is such evidence without its worth in criminal prosecutions, especially where the question is whether insanity is genuine or simulated. It is not merely the *contents* of writings that contribute to the decision of the question. The style and handwriting often supply important tests. "What experienced forensic physician," asks Liman,[1] "is not familiar with the writings of certain classes of lunatics, namely, the so-called querulants, writings teeming with flourishes—words and sentences italicized singly, doubly, or trebly—with parentheses, interlineations, notes of quotation—writings often very voluminous, swollen with citations of alleged laws?" In other cases of lunacy are noticed peculiar modes of construction, words and expressions both original and incomprehensible, such as are familiar to every psychological physician. The first stages of paralysis are characterized by flightiness of writing, omission of words and sentences, blots, etc. But here, again, cautions are to be interposed. There have been some literary men of eminence who have been unable to copy a page exactly, and others who constantly leave out words and misspell. Proof-readers, in fact, could supply on this topic an interesting chapter to the curiosities of literature, showing what eccentricities of style and penmanship mark even some of the soberest thinkers. On the other hand, lunatics have been known sometimes to write a sequence of letters in which no mark of eccentricity appears. But this can only be for a time. Familiar letters, written at periods when the patient conceives himself unwatched, will in the long run necessarily give marks by which the experienced observer will detect insanity where it exists.

6. *Prior history.*

§ 388. This topic has already been referred to incidentally, and will be again noticed in another relation.[2] It is enough now to say that after some fluctuations, it is now the settled rule, that all events in the patient's prior history, and all traits in his character, past or present, tending to show an insane taint in his constitution, are admissible in evi-

All prior history is admissible evidence.

[1] Liman's Casper, 1871.

[2] See *infra*, § 391.

dence. His own declarations may be adduced for this purpose in his own defence, though when such declarations are recent, and are open to the suspicion of being manufactured for the purpose, they are to be severely scrutinized.[1]

7. *Nature of the act.*

(*a*) *Its insensibility.*

Insanity may often be detected by insensibility of act

§ 389. "In foro medico," as is well remarked by Schürmayer,[2] "a derangement of the mental faculties is generally to be presumed where the consciousness, imagination, and sensual apperception or impulse, when subjected to common and usual provocations, internal or external, respond in a manner different from what they would in a normal state. But whether a certain action, undergoing a criminal investigation, was the effect of a diseased mental activity of the subject, and committed when he was not master of himself, is a question to be answered primarily from the indicia presented by the action itself, and then from the results of an examination of the accused, in reference to his physical, moral, and mental condition before, at, and after the deed in question. Illustrations of acts whose *insensibility* can be received to show the irresponsibility or incompetency of the actor, may be found in the old law cases of a legacy to the King of Siam, and of an executory devise to all the children in a particular parish who should, in a specific year, be born with moles on their faces. The presumption of irresponsibility would, of course, attach with great force, under similar circumstances, to criminal acts equally insensible, as in the case of the idiot who was found putting an infant brother into the pot to boil for dinner."

§ 389*a*. Liman, in his (1871) edition of Casper,[3] gives the case of a peasant woman, who for years had been suffering from mental disorders, and who had determined to kill her three children with her husband's razor. For this purpose she took the razor a week before the time she had selected, and hid it. But the razor was the only one her husband possessed; and that he would call for it the next morning after its abstraction was what his wife, if sane,

[1] See Baxter *v.* Abbott, 7 Gray, 80; Andrews' trial (Sup. Ct. Mass. 1868), Pamph. Rep. 124.

[2] § 522. See *infra*, § 396.

[3] Berlin, 1871, p. 427.

could have expected. This actually took place. It turned out she had hid the razor in an old press, that was always open, and which for years had had no key. The husband naturally found the razor, and placed it on the shelf where it generally lay, and from which the unhappy woman took it the moment before the assault.

§ 389*b*. But two cautions are to be observed in regard to the weight of this kind of testimony. Maniacs (as distinguished from imbeciles) frequently construct, in furtherance of their insane schemes, plans of consistent ingenuity. As an illustration of this may be mentioned the case of Billman, an undoubted maniac, who contrived a noose, on the inside of the usual aperture at the top of the door of his cell through which the attendants were in the habit of looking or handing in food; very ingeniously succeeded in inducing an attendant to put his head through, and then caught him in the noose; and then, finding this device unsuccessful, subsequently enticed the same attendant, on plea of sickness, into the cell, killed him, and then changed clothes with him; and after this so skilfully adopted the manner proper for the purpose, that he walked away unsuspected, and was not arrested until he was out in the street. And cases are numberless in which persons laboring under insane delusions have executed plans based on these illusions with the most consummate adroitness and persistency.

But maniacs are often consistent and criminals irrational.

So the converse holds good, that sane persons, when working out even the coolest plans of mischief, almost invariably drop a stitch or expose a blot, by which discovery is afterwards caused.[1] Boynton, for instance, in a case hereafter mentioned, prepared his plans of assassination with singular caution, but wadded his gun with a piece of paper, whose fragments were discovered at the place of the murder, and which led to his identification. If this is the case with deliberate crimes, eminently is it so with crimes committed in passion. Such crimes are often as insensible in their mode of execution as any that the most raving maniac could perpetrate.

(*b*) *Its incongruity with antecedents.*

§ 390. When a man of uniformly mild character boldly and openly commits a deed of blood; when a woman of previous purity

[1] See fully, *infra*, § 782.

This often proper to be considered.

gives way to lasciviousness; when a long course of irreproachable honesty and exactness is suddenly broken in by profligacy; or domestic peace, by unprovoked ebullitions of violence, or by expressions of distrust to those formerly most loved or most trusted,[1] it is proper to consider how far unsoundness of mind may not be considered as the cause.

Knowledge of past history necessary.

§ 391. It has already been mentioned[2] that the examiner, in order to give a conscientious and correct report, must acquaint himself with the plaintiff's history, so far as this is practicable. In Prussia this is required by statute;[3] and, however much a witness, in stating the sources of information, may be restricted by the Anglo-American rules of evidence, his testimony, by the same rules, will be shorn of much of its force if it does not rest on an adequate foundation of fact. Relations, friends, servants, above all, family medical advisers, may well be expected to render much information, upon which a forensic physician, charged with the solemn duty of giving an opinion as to sanity, may base just conclusions. But at the same time much caution is necessary in securing such renditions. The family of a patient may have very strong reasons for either believing or disbelieving his sanity. And in particular is the evidence of mere occasional visitors to be jealously scrutinized. To hundreds of such the patient may have appeared sane; and yet the negative testimony derived from such is more than counterbalanced by proof of some positive insane act committed by the party in the privacy of his family, or in secret, when he believed himself to be unsuspected by human eye. Public or pre-notified examinations are entitled to little comparative weight. They always throw the patient on his guard. They produce in him at the best a non-natural psychological state, and they give both stimulus and opportunity to the sane to pretend to be insane, and to the insane to pretend to be sane.

Sanity in one man might be insanity in another.

§ 392. Eminently, therefore, is it necessary to have a knowledge of a patient's past history. That which is sanity in one man, and which is the state of mind which his antecedents necessitate, would be insanity in another. A man, for instance, is conscious of some secret guilt, and he

[1] See Médecine Légale, par M. Orfila, tome i. p. 389.

[2] *Supra*, § 388.

[3] Liman's Casper, ed. 1871, p. 411.

shelters himself, in contrition and self-loathing, from the public eye in morbid seclusion; or he flies from shadows; or he resorts to violent action to cover up the traces of his crime. Or he is placed in a position in which eccentricity if not incoherence may seem essential to the maintenance of his rights. To penetrate the mask of Hamlet's madness, for instance, it is necessary to understand Hamlet's history. To explain Cain's wild flight it is necessary to understand Cain's guilt.

Insane act either isolated or one of a sequence.

§ 393. Was, then, the alleged insane act one that stood out in isolated insularity in the patient's history, or was it one of a sequence of morbid though sane, and, therefore, criminal transactions? Here, indeed, if the question be one relating to the mere proof of guilt, insanity being disentangled from the issue, the Anglo-American practice differs essentially from that which obtains on the continent of Europe. By the former in criminal trials, it is not permitted for the prosecution to bring in evidence of the defendant's prior character; and character only comes in when invoked by the defendant itself. By the latter, the defendant's whole history, so far as it is supposed to throw light on the case, is introduced at the outset by the prosecution.[1] But when the issue is insanity, the rule, according to the Anglo-American practice, changes. The reasons are, first, because insanity is usually set up by the party himself, or his representatives, and from its nature drags into the issue the party's whole life. Secondly, insanity is chiefly to be proved or disproved by facts collected from the party's history. His counsel may put in evidence prior alleged acts of insanity, or may rely on the insulated or sporadic character of the particular act to show its insane type. The contesting party may reply by showing that the alleged insane acts were not exceptional and abnormal, but were the consequences of voluntary and intelligently indulged passions, or of sane design.[2]

Isolated and abnormal acts possible.

§ 394. That there are such things as isolated and abnormal acts, which are even vehemently foreign and antagonistic to the perpetrator's history and character, it needs but a slight acquaintance with the literature of this topic to show. Of such may be mentioned, as an illustration, the

[1] Wharton's Conf. of Laws, § 892. [2] See *supra*, § 144.

case of an affectionate and most exemplary father, hereafter to be more fully noticed, who suddenly, under the influence of a sharp but crushing attack of melancholia, accompanied by a delusion that there was impending on the household a ruin only to be escaped by death, killed one of his children and attempted the life of another. Two similar cases are reported by Dr. Liman.[1] Even when an alleged insane act is a part of a sequence of alleged acts of intelligent guilt, it is proper to inquire whether the whole sequence may not be attributed to a diseased brain. Here, however, come in the questions of motive, and of consequentiality, which are elsewhere specially discussed.[2]

No disease necessarily a cause of moral acts.

§ 395. It has been already observed that physical diseases, especially those of a nervous type, are particularly worthy of consideration in this respect; but it is at the same time always to be remembered that there are no physical conditions which necessitate a specific moral act. Valuable indeed are the contributions to this branch of psychology which have been made by Morel,[3] Maudesley, and Ray. But we must, nevertheless, accept as at present conclusive the assertion of Liman, in his late authoritative exposition of Casper,[4] that the weight of authority both psychological and psychopathical is that we have no grounds to assume that in insanity disease stereotypes itself in act. Diagnosis of physical disease may establish a *probability*, but nothing more. It is always a matter of admissible evidence; but without positive proof of mental disturbance it is entitled to no controlling effect.[5]

Insane acts generally done openly and avowedly.

§ 396. It should be noticed, also, that a man of unsound mind generally chooses the most injudicious time and place for the perpetration of the act, although the cunning and address with which an offence was committed do not exclude the supposition of derangement,[6] and repels with indignation every intimation of his insanity; in many cases asserting that he committed the crime with perfect consciousness, and

[1] Liman's Casper, ed. 1871, cases 287, 289.

[2] See §§ 399–406.

[3] Traité de la Méd. Lég., Paris, 1866.

[4] Berlin, 1871, p. 420.

[5] See *supra*, §§ 146–150.

[6] See Méd. Lég., J. Briand, p. 553, Paris, 1852; and see *supra*, §§ 361, 389, 390.

when entirely in his senses, and disregarding all that is said to extenuate it.[1]

§ 397. M. Falret thus speaks of the change of character which is a prominent symptom of commencing insanity: Sometimes, instead of a simple exaggeration, it is a veritable transformation that the character undergoes. Avarice gives place to prodigality, piety to irreligion, modesty to obscenity, temperance to drunkenness, the love of truth to deceit, the most tender and tried affections to indifference and even hate.[2]

Insanity often changes character.

§ 398. A frequent result is the neglect of the duties due to family and society, disorder of conduct and derangement of affairs, and those ebullitions of irritation and violence which momentarily and sometimes forever destroy the harmony existing between relations and friends. The changes of conduct observable in the incubation of mental diseases are infinite; the deranged show a neglect or an unaccustomed zeal for their customary occupations, and for the cares and attentions of family, and for social customs and duties. Patients who were before sedentary in their habits, indulge in long absences from their dwellings. Some show an indifference and neglect for the persons and things they loved the most, and seek after objects which they did not like. Others overwhelm you with demonstrations of obligingness and devotedness. Generally those thus affected are absent and forgetful; they do not remember what they have done or what they were about to do an instant before, and then seem much surprised when these frequent absences of mind are pointed out to them. Their conduct abounds in contrasts. Those who were orderly become dissipated; those who were careful in business now enter upon the most dangerous speculations, and they addict themselves to play, drinking, and sexual excesses, and in fact to all the vices which were before unknown to them.[3]

(*c*) *Its motivelessness.*[4]

§ 399. "It is assumed or implied," says Dr. Taylor, with great justice, "that sane men never commit a crime without an apparent

[1] Compare Friedreich, Handbuch der gerichtsaertztlichen Praxis. Vol. i. p. 370.

[2] See *supra*, § 361.

[3] Leçons Cliniques sur l'Alienation Mentale, M. Falret. 8th Leçon, p. 215. Paris, 1854. *Supra*, § 378.

[4] See *supra*, § 302. Médecine Légale, J. Briand, p. 548–49. Paris, 1852. Pinel, Alienation Mentale, p. 157.

Apparent absence of motive not a proof of insanity.

motive, or one of delusive nature only in the perpetration of a criminal act. If these positions were true, it would be very easy to distinguish a sane from an insane criminal, but the rule wholly fails in practice. In the first place, *non-discovery* is here taken as a proof of the *non-existence* of a motive; while it is undoubted that motives may exist for many atrocious criminal acts without our being able to discover them—a fact proved by the numerous recorded confessions of criminals before execution, in cases of which, until these confessions were made, no motive for the perpetration of the crime had appeared to the acutest minds. In the case of *Courvoisier*, who was convicted of the murder of Lord William Russell, in June, 1840, it was the reliance upon this alleged criterion, before the secret proofs of guilt accidentally came out, which led many to believe he could not have committed the crime; and the absence 'of motive' was urged by his counsel as the strongest proof of the man's innocence. It was ingeniously contended, 'that the most trifling action of human life had its spring from some motive or other.' This is undoubtedly true, but it is not always in the power of man untainted with crime to detect and unravel the motives which influence criminals to the perpetration of murder. No reasonable motive was ever discovered for the atrocious murders and mutilations perpetrated by *Greenack* and *Good;* yet these persons were very properly made responsible for their crimes. On the trial of Francis for shooting at the queen, the main ground of the defence was, that the prisoner had no motive for the act, and, therefore, he was irresponsible; but he was convicted. It is difficult to comprehend under what circumstances any motive for such an act as this could exist; and, therefore, the admission of such a defence would have been like laying down the rule, that the evidence of the perpetration of so heinous a crime should, in all cases, be taken as a proof of the existence of an irresponsible state of mind. Crimes have been sometimes committed without any apparent motive, by sane individuals who were at the time perfectly aware of the criminality of their conduct. No mark of insanity or delusion could

Etudes Medico-Psychologiques sur l'Alienation Mentale, par L. F. E. Renaudin. Paris, 1854, chap. 18th, p. 779. See also Leçons Cliniques de Médecine Légale, M. Falret, Leçon 2d, pp. 55–67. Paris, 1854. Also Médecine Légale, par Orfila, tome i. p. 304. Paris, 1840.

be discovered about them, and they had nothing to say in their defence. They have, however, been very properly held responsible. On the other hand, lunatics confined in a lunatic asylum have been known to be influenced by motives in the perpetration of crimes. Thus they have often murdered their keepers in revenge for ill-treatment which they have experienced at their hands.[1] Thus Farmer was acquitted as insane, while the clear motive for homicide was revenge and ill-feeling. In another case the act of murder was perpetrated from jealousy.[2] On the whole, the conclusion with respect to this assumed criterion is, that an absence of motive may, when there are other strong evidences of insanity, favor the view of irresponsibility for crime; but the non-discovery of a motive for a criminal act cannot of itself be taken as any proof of the existence of homicidal monomania in the perpetrator. It is right to state, however, that the law invariably acts on the humane principle, that the absence of a sufficient motive forms a strong presumption of innocence—the presence of one is no proof of guilt."[3]

That apparent *motivelessness* is sometimes an accompaniment of sanity, will be noticed hereafter.[4]

§ 400. It has been already said,[5] that it is the duty of the psychological expert, before testifying on the question of sanity, to explore the motives which led to the perpetration of the act or acts under examination. No act is committed without motive. This motive may be sane or insane. But so complex is human nature—so subtle are the influences which lead to human actions—that for the assignment of true motive it is requisite not only to have an experimental knowledge of the human heart in general in its manifold phases and possibilities, but to have a special acquaintance with the history of the person whose sanity is under investigation. In making such a study, the following suggestions will be of use.

Suggestions for study of motive.

§ 401. 1. *It is rare that the motive to an act is simple.* There is generally a confluence of motives, for and against a particular step; and the will may remain in equipoise until some trifle, such as a prejudice scarcely acknowl-

Motive rarely simple.

[1] See the case of Queen *v.* Farmer, York Spring Assizes, 1837.

[2] Reg. *v.* Goule, Durham Summer Assizes, 1845.

[3] Taylor's Med. Jurisprudence, pp. 578, 679.

[4] *Infra*, § 782.

[5] See *supra*, § 392.

edged even by self, or an omen, or a lot, turns the scale. So far, also, from particular motives acting on men with uniform force, they vary in their effects as materially as do the characters of those on whom they operate. What on one man has an overwhelming force influences other men but slightly. What is rational to one man is highly irrational to another. Sir Robert Walpole, for instance, was a statesman of peace, and the war with Spain, which he was goaded to undertake, was hostile to his whole system of policy; it could not be fitted into that system of policy; it was to him irrational. Lord Chatham, on the other hand, was a statesman of war; a patient peace policy was to him so unnatural and incongruous that when he attempted it he was capricious, if not imbecile; while he carried on war with an adventurous and bold hand, and displayed in its conduct the highest gifts of genius. To him, therefore, it was as rational to flash forth immediate war on a supposed national affront, as to Walpole it would have been gravely to consider the issue, and, if it could be done honorably, to cause the removal of the offence by arts of peace. Yet, for unjust war, when it occurred, Walpole and Chatham would have been equally responsible to public opinion, though the first embarked in such war from a weak concession to rivals, the second from personal passion and fire. So, to take a case that occurred in Philadelphia some years since, a young man named Alexander, from one of the southwestern States, educated in the most fantastic school of chivalry, received a supposed insult in a broker's shop, and instantly shot the assailant dead. To him, the act, on his code, was *rational;* it was the natural result of his principles, which he had intelligently accepted; he was as morally responsible to the law of the land, though it may be in a different shade of guilt, as would be the assassin who, on the principle that he will get what he can, kills the victim whom he plunders, or the duellist who from cowardice shivers into a duel. Insanity in neither case is to be presumed; there is intelligent motive, though motive deriving its force from the character on which it acts. So also in a parallel drawn by Liman.[1] A wretch named Markmann saw in the street an old woman carrying a basket, in which was a clean linen shirt. He wanted to have it; he followed the woman to rob her; he struck her; and from the blow she died.

[1] Liman's Casper, ed. 1871, p. 422.

H., an educated and refined young officer, was struck on the face suddenly, in a public garden, in presence of his intended wife and a large crowd of spectators; and immediately shot the assailant to the heart. Yet H. would not have been impelled to homicide by desire to rob, nor Markmann by a desire to avenge wounded honor.

§ 402. In each case, however, the motive that operated was one that was adequate according to the defendant's own lights. It is necessary, therefore, in order to determine upon the *motivelessness* of an act, for the expert to place himself at the point of vision occupied by the person whose act is under investigation. We have no right to establish for the *causa facinoris* an arbitrary motive such as would in reference to dispassionate men be rational. There are no dispassionate men. Each man has his own idiosyncrasies which, though more or less operative on his judgment, are consistent with sanity. Eminently is this the case with wills. A man of high honor may be peculiarly sensitive as to a child's unworthiness, and from this disinheritance may spring. Another may disinherit a relation for an offence, trivial in grade, and perhaps imaginary; yet, if there be no fraud or insanity proved *aliunde*, the will is good.[1] So also as to the *causa facinoris* in criminal cases. There is no *minimum* below which a motive, in the eye of the law, ceases to exist. Murders have been committed by the abject and avaricious for coppers; while men almost stifled with wealth have been known to seek to augment such wealth by perjuries and frauds. *Trivial* motives, as they are sometimes called, are, considered by themselves, proof rather of a mind familiar with crime than of lunacy.

§ 403. 2. *Nor can we dare, as is sometimes done, to withdraw instinctive passion from the range of responsible motives.* As has been strikingly stated, in an argument elsewhere noticed,[2] the question is, is the motive, in respect to the individual under investigation, one that can be overbalanced by fear of punishment? Is, for instance, a man who flies into transports of rage or lust capable of moderating these transports when the fear of punishment or disgrace is held steadily and conspicuously before his eye? If so, the law must threaten such punishment and

Instinctive passion responsible.

[1] See *supra*, §§ 83–86.

[2] See *supra*, §§ 146–153, 188, 189.

disgrace as the necessary consequence of the indulgence of such passion; and, where it threatens, it must execute.

Wickedness not motiveless.

§ 404. 3. *Nor can we, with any safety to the community, or any judicial consistency, declare as motiveless those offences which are stimulated by no other apparent purpose than that of outraging law, or that of inflicting upon others pain or disgrace.* It is true we may connect such offences in their lighter phases with the desire to attract attention, or to excite surprise, or to gratify curiosity as to how others will behave in certain absurd relations in which they may be placed.[1] Under this head may be mentioned the police adventures which Cruikshank has recorded as fashionable among men of the town in the days of the regency, and the practical jokes, sometimes very cruel, designed by Theodore Hook. But there is another class of offences, based simply on the love of malevolent action, and which, without having even the excuse of vanity or curiosity advanced for the last, are prompted by such malevolence pure and simple, and yet which the law regards as in the highest degree criminal, and the objects of its most signal penalties. In January, 1872, we hear of a prosecution instituted against some laborers in a Pennsylvania mining town who poured petroleum on a negro boy and then set fire to him; and with this may be grouped the case of a miscreant mentioned by Bottex, who threw a boy, a stranger to him, in the water, simply to watch his drowning struggles; of Earl Ferrars, who, in cool malignity and with no imaginable other motive, killed his steward; of the Count of Charleroi (a Bourbon), who, among other atrocities, out of "sport" shot one of his servants, from the roof of a house, as he would have shot a wild beast; of the widow Zwanziger who poisoned as a matter of curiosity; of the fiendish mother told of by Pöhlman, who, after a series of cruelties, shut up her child in a room with a nest of wasps. These cases, if we limit motives to lust, to avarice, to revenge, to passion, to desire to secure safety, are motiveless. They may, as has been well remarked, pass over a wide range, from the boy who malevolently tortures a kitten, to Tiberius who malevolently tortures a slave. They may spring simply from the desire, more or less powerful, to inflict pain. Yet

[1] See *supra*, §§ 163–178, 183, 189. For authorities, see Wh. Cr. L. 8th ed. § 119.

they are peculiarly amenable to penal justice for two reasons. *First*, being what is commonly called "motiveless," they cannot be warded off by any amount of personal, voluntary precaution. We can defend ourselves by bolts from the burglar; we can, by prudence, keep out of the range of the predatory and deliberate assassin; we may cause the arrest of one by whom our life is threatened. No precaution, however, is a defence against the merely malevolent criminal, who fires a house, or shoots a stranger, simply to watch the pain he inflicts. The only hand that can intervene is that of the law. *Secondly*, such offenders are peculiarly open to the influences of fear. They are either thoughtless or cowardly. To check them, it is essential for the law to announce to them in terms unmistakable, "this thing will be signally punished." This, in fact, is the only motive by which they can be restrained; and by this, when the motive is presented to them, and they believe in it, they are restrained. But what the law thus announces, it must execute. Nor can it speak to such characters, except by the example of punishment inflicted upon others, and therefore by punishment imminent to self.[1]

§ 405. Yet, making all these deductions, there is such a thing as a legally *motiveless* act. When, without malevolence, and without any benefit or gratification to self, an act is done, the perpetrator cannot be regarded as intentionally and specifically criminal.

Yet there may be a legally motiveless act.

(*d*) *Neglect to escape.*[2]

§ 406. Exculpatory subterfuges, and attempts to escape, if designed before the commission of the offence, go a great way to show that the offender was conscious that the intended act was wrong. When, indeed, such preparations are intelligently and consistently made, very strong proof of insanity must exist to overthrow the presumption of sanity they supply.[3] In the case of Christiana Edmunds,

Pre-arranged subterfuges not always proofs of sanity.

[1] Cases of homicide, where the motive was mere malevolence, and desire to inflict pain, and yet where this motive was one which fear was able to control and subdue, are given by Feuerbach, Aktenmässige Darstellung Merkewürdiger Verbrechen, Giessen, 1828, and by Liman, in his edition to Casper, Berlin, 1871, p. 425.

[2] See Wills on Circumst. Ev. 70; Best on Presump. 322; Wh. Ev. § 750.

[3] *Supra*, §§ 168–170.

which is elsewhere fully noticed, this was the chief difficulty with which the counsel for the defence had to struggle. The charge was poisoning; and it was shown that she had taken peculiarly skilful means, both before and after the guilty act, to throw its burden upon others. Yet it must be remembered that, when a mind otherwise intelligent is controlled by an insane delusion, preparations the most rational may be made to gratify this delusion, and subsequently to defend its gratification. Several cases have just been cited to illustrate this; and the discipline of lunatic asylums is based upon the existence of such capacity, and upon the moral sensibility displayed by such devices to avoid detection. But, after all, it is rare that some insane freak does not ultimately, in cases of true insanity, exhibit itself after the consummation of the act. In a melancholy instance elsewhere noticed, a gentleman who had planned and executed, under an insane delusion, the killing of one of his children, made his escape, it is true, successfully, but dressed himself simply in his night-clothes, and was hence at once arrested. To this effect, also, is a case reported by Dr. Liman. An upholsterer named Schulze, who, under a similar delusion, killed his children whom he most tenderly loved, took the pains, before the act, to send out of the house, on an errand, a woman who otherwise would have been a witness of the act. But the pretext on which he sent her was the delivery of a letter to a clergyman whom he did not even personally know. When the letter was opened, it was found to contain simply the words: "*Eu. Wohlgeboren Schulze*"—your honorable Schulze.

Skill in concealing delusions proves little.

§ 407. In cases where the sanity of a testator or obligor is contested, and where the point is the existence of an insane delusion, little can be inferred from the skill and caution with which such delusion is indulged. A testator, for instance, under the delusion of infidelity or persecution from his nearest and most devoted relatives, has been known most artfully to conceal this delusion until, as in one or two reported cases, it is drawn from him by his legal adviser when he makes his will. So in the case of a gentleman against whom a commission of lunacy was taken out in Philadelphia some years since, and in which the evidence of insanity was incontestable, one of the delusions was that animals were intelligent, and capable of correspondence. He wrote letters to cows, for instance, which letters he

showed the utmost adroitness in concealing, and which he afterwards attempted to excuse as a joke. Yet the precautions he displayed in mailing the letters, while they showed his sense of the risks to which such wild acts exposed him, showed also the reality of the delusion by which he was beset.

§ 408. Yet here also the converse, especially in criminal cases, fails. Prearranged subterfuges infer, no doubt, a consciousness that the act in question is reprehensible; but the absence of such subterfuges does not prove a consciousness that such act was innocent.[1] For the sane culprit is often not in a position in which such preparations can be made. Crimes committed in sudden passion, in particular, are from their very nature incapable of being thus antecedently shielded.

Innocence not shown by absence of prearranged subterfuge.

§ 409. Equally complex, though essentially dissimilar, are the questions that arise when the effort is to draw the presumption of sanity from attempts at subterfuge or escape after the consummated offence. Men, sane and insane, innocent and guilty, instinctively seek to escape danger. Innocent men, charged with crime, have sometimes in *quasi*-insanity fled their country, and resorted to frantic, but tortuous and even guilty efforts to turn upon others the impending shock.[2] This, in several well-known cases in the United States, has been the result of the attempt to blackmail men who, as it transpired ultimately, were entirely innocent, but who were driven almost to delirium by the attack. On the other hand, persons who, either from revenge, or jealousy, or political enthusiasm, commit crimes whose consequences they know they cannot evade, and in whose character they glory, may resist this instinct, and boldly surrender themselves after the successful commission of the act. Numerous cases of this kind are found in trials for homicide through jealousy; and among those where the impulse was political fanaticism may be mentioned that of Ravaillac, who, after assassinating Henry IV., exultingly declared his guilt. Yet it must not be forgotten that in cases of imbeciles, and those acting under certain phases of insane delusion, indifference to personal safety would, in such cases, be a necessary incident of freedom from consciousness of wrong-doing.

Attempts at escape after occurrence no proof of sanity.

[1] *Infra*, § 782.

[2] Wh. Cr. Ev. § 750.

(e) *Forgetfulness as to act.*

Subsequent forgetfulness of action is a presumption of insanity.

§ 410. Here we may notice another feature which accompanies insane action, viz., *subsequent obliviousness as to the entire occurrence*.[1] Several curious instances are given in the books in which, after acts of marked and even atrocious lawlessness committed by the insane, there was an utter forgetfulness of the event, or a remembrance of it only as something dreadful that occurred in a dream. The *sane* man sometimes trembles on waking, lest something he had dreamed of doing, he had really done. The *insane*, after committing the act when awake, afterwards shivers at it as if it was only a dream, yet a dream which he shudders to recall. Such was the state of Mary Lamb, after killing her mother, of which she had only a blurred consciousness as of something she had dreamed of; and not rare are the cases in which maniacs, in lucid intervals, have asked with cries of terror, as their first inquiry, for one whom in their paroxysm they may have destroyed. This, we are told by Dr. Liman, is peculiarly the case after injuries of the brain, and after the transitory mania of persons affected with epilepsy, hysteria, uterine disease, acute intoxication, sleep-drunkenness, and unconsciousness produced by anemia of the brain. Of cases of such dreamy confusion and of misty terror at a vague but appalling recollection, we have illustrations in trials, of which several are reported in the United States, of mothers who, when in puerperal fever, killed their children. Several cases where this defence was psychologically investigated are given in Liman's Casper.[2]

But such a defence open to suspicion.

§ 411. Yet, even here, when such oblivion is set up, there are cautions to be interposed. It is always a matter of grave suspicion when the party under examination professes to have *no* recollection of the event.[3] Psychologically, such a supposition of two utterly distinct consciousnesses is only probable when there is a loss of memory as to the whole section of time in which the event in question is contained. There are, therefore, grave reasons to believe the defence is feigned, when, before the examination is instituted, and when the patient thinks himself unobserved, he betrays a recollection of collateral incidents embraced in the same scope of time.

[1] See *infra*, § 449. [2] Vol. ii. Cases 324, 325, 329. [3] *Infra*, § 449.

CHAPTER III.

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I. EMOTIONS.[1]

Insanity distinguishable from passion.

§ 412. Briand says, that from the height of passion to madness is but one step, but it is precisely this step which decides the quality of the act. It is important then to know exactly the precise characteristics of the passions and of insanity. But here science fails, for it must be admitted that we are unable to point out the place where passion ends or where madness commences.[2] M. Orfila draws the following distinction between a man acting under the impulse of the passions and one urged on by insanity. The mind is always greatly troubled when it is agitated by anger, tormented by an unfortunate love, bewildered by jealousy, overcome by despair, humbled by terror, or corrupted by an unconquerable desire for vengeance, etc. Then, as it is commonly said, a man is no longer master of himself, his reason is affected, his ideas are in disorder, he is like a madman. But, in all these cases, a man does not lose his knowledge of the real relation of things; he may exaggerate his misfortune, but this misfortune is real, and, if it carries him to commit a criminal act, this act is perfectly well motived. Insanity is more or less independent of the cause that produced it, it exists of itself; the passions cease with their cause, jealousy disappears with the object that provoked it, anger lasts but a few moments in the absence of the one who by a grievous injury gave it birth, etc. Violent passions cloud the judgment, but they do not produce those delusions

[1] See particularly Aristotle's delineation of the Passions in the Second Book of his "Rhetoric;" and see also L. Krahmer, Handbuch der gericht. Med. Halle, C. A. Schwetschke, 1851, § 126. Observe, also, an essay by Leigh Hunt, in his Miscellanies, p. 51.

[2] Méd. Lég. p. 551. Paris, 1852. See also *infra*, § 816, on the psychical indications of crime. See an article on Emotional Insanity, 5 Journ. Nerv. & Ment. Diseases, 79.

which are observable in insanity. They excite for a moment sentiments of cruelty, but they do not produce that deep moral perversion which influences the madman to sacrifice, without motive, the being he most cherishes.[1]

1. *Remorse.*

§ 413. "When remorse," says Cogan, "is blended with the fear of punishment, and rises to despair, it constitutes the supreme wretchedness of the mind."[2] And of all stages of passion, remorse is the one most liable, when the conscience is acute, to be mistaken for insanity itself. Of this we have a melancholy case in our own local experience. A young gentleman of peculiarly nice sense of honor and keen sensibility, killed an intimate and beloved friend in a duel, hastily forced on by his own undue susceptibility. For twenty years he has never ceased to stride to and fro the chamber in which he has been confined, firing an imaginary pistol at intervals, and then throwing himself back with the acutest expression of misery. In this instance remorse has run into madness. In others it has made but a slight progress in that direction; in others entire sanity and responsibility remain. And yet in all instances it presents symptoms which it is well for the forensic physician to examine in relation to their moral as well as their psychical origin.

Remorse may approach insanity.

§ 414. Harpsfield, in his Ecclesiastical History, gives us the following graphic report of the dying words of *Cardinal Beaufort*, which is a powerful illustration of the effect of this passion: "And must I then die! Will not all my riches save me! I could purchase the kingdom, if it would save my life. What! is there no bribing of death? When my nephew, the Duke of Bedford, died, I thought my happiness and my authority greatly increased: but the Duke of Gloucester's death raised me in fancy to a level with kings, and I thought of nothing but accumulating still greater wealth, to purchase at last the triple crown. Alas! how are all my hopes disappointed! Wherefore, O my friends, let me earnestly beseech you to pray for me, and

Relation to derangement.

[1] Méd. Lég. tome i. p. 407. Paris, 1848. This passage adopted in McFarland's case, 8 Abbott (N. Y.) Prac. C., N. S. 69.

[2] Cogan on the Passions, vol. i. chap. 2, § 3.

recommend my departing soul to God!" A few minutes before his death his mind appeared to be undergoing the tortures of the damned. He held up his two hands, and cried—"Away! away! why thus do you look at me?" This same scene in the cardinal's chamber is thus still more vividly depicted by Shakspeare:—

SCENE—*The Cardinal's bed-chamber.*

Enter King Henry, Salisbury, and Warwick.

King Hen. How fares my lord? speak, Beaufort, to thy sovereign.

Cardinal. If thou be'st death, I'll give thee England's treasure,
Enough to purchase such another island,
So thou wilt let me live, and feel no pain.

King Hen. Ah, what a sign it is of evil life,
When death's approach is seen so terrible!

Warwick. Beaufort, it is thy sovereign speaks to thee.

Cardinal. Bring me unto my trial when you will;
Died he[1] not in his bed? where should he die?
Can I make men live whe'r they will or no?—
Oh! torture me no more, I will confess.—
Alive again? then show me where he is;
I'll give a thousand pounds to look upon him.
He hath no eyes, the dust hath blinded them.
Comb down his hair; look! look! it stands upright,
Like lime-twigs set to catch my winged soul!—
Give me some drink; and bid the apothecary
Bring the strong poison I bought of him.

King Hen. O thou eternal Mover of the heavens,
Look with a gentle eye upon this wretch!
Oh, beat away the busy meddling fiend
That lays strong siege unto this wretch's soul!—
And from his bosom purge this black despair!

Warwick. See, how the pangs of death do make him grin.

Cannot be always suppressed.

§ 415. Schürmayer's[2] views on this point are of peculiar interest, as indicating the conservative jealousy which guards against that involuntary dissimulation on the patient's part which makes *real* and yet at the same time *responsible* emotions so difficult to distinguish from *irresponsible* disease. "Remorse," he says, "often affects the mind so powerfully as to assume the appearance of insanity. The smothered self-reproach of the criminal sometimes expresses itself in the shape of deep de-

[1] Meaning the Duke of Gloucester. [2] See Gericht. Med., § 519.

jection, and sometimes in that of petulance and irritability. Almost every defendant who is guilty will be seen to lapse at least periodically into a deep reverie, with the eyes staring into vacancy. The most consummate villains alone are exempt from such feelings. Criminals generally endeavor to suppress the voice of conscience, because they fear to be betrayed by it. But this very reaction is perfectly legible in their faces, gestures, and general bodily condition. Under these circumstances the qualms of conscience frequently assume the appearance of disease. The accused, particularly if in confinement, does not sleep at night for weeks, and consequently looks pale and haggard, loses his appetite, and speaks with hesitation, and sometimes with trembling. When this condition reaches a point of great intensity, the guilty is visited by visions and hallucinations; avenging angels appear to him, or evil spirits, phantoms, or the shades of the dead and injured. Add to this a little superstition, and the victim is firmly convinced of the reality of these apparitions, and regards them as punishments sent from heaven. In the course of the trial itself, these symptoms are less perceptible; and generally the culprit hesitates to tell an official person what he suffers in seclusion, but the struggle within frequently breaks out in spite of his efforts, or at least interferes with the coherence of his speech. In such cases a man, perfectly hale in mind and body, will frequently talk at random, or at least express himself in so confused and stupid a manner as to induce doubts of his sanity. It is remarkable, that those who confess their guilt are subject to these attacks equally with those who deny it. It might be supposed that the criminals who have made a public confession would experience a regenerating sense of relief in consequence of having removed a load from their minds; but the confession often precedes the first sensations of remorse, by directing the attention to the moral and religious aspects of the deed.

"This proves that even a confessed criminal should be treated with great circumspection. Instead of overwhelming him with reproaches, the victory gained by his integrity over his fears should be held up to himself as a restorer of self-respect.

"The more depraved order of culprits do not allow their consciences to drive them to despair, but only to *petulance;* but even this frame of mind sometimes goes so far as to lead the subject to do the most incomprehensible things, such as asserting things against

reason, refusing to answer, or causing constant trouble and vexation in the prison. Such persons are often greatly misunderstood, sometimes by ascribing their offensive conduct solely to malice and spite, and sometimes by regarding them as demented when, driven by their chagrin, they lose all reflection, and say or do things to their own injury. The consciousness of crime, coupled with the despair of expiation consequent upon having denied it, produce an internal schism which may result in the most singular and distracting phenomena.

"A tolerably sure criterion of an awakened conscience is often to be found in the desire of the culprits for some consolatory assurance. Even those who deny their guilt are generally anxious to know how they would be able to bear the condition of a criminal sentenced according to law. In many cases there is an exaggerated idea of the impending punishment, still further increased by the imaginings which haunt the prisoner's solitude. When such erroneous notions come to the knowledge of the examining physician, it is perfectly right in him to correct them, and the information thus imparted will generally produce a change of feeling which at once dispels every idea of mental derangement."[1]

§ 416. *Remorse as implying sanity.*[2]—Remorse, though sometimes adduced as a test of sanity, is an emotion which is often most keenly felt by those who, in a shock of transitory madness, have committed an illegal act. Nothing, for instance, could have been more acute than the anguish of Mary Lamb, as has been already noticed, when she awoke to the consciousness that her mother had died by her hand; and similar were Cowper's expressions of misery when his reason was temporarily restored and he had gleamings of the fact that he had attempted self-destruction when in a state of lunacy. An idiot or imbecile, it is true, does not experience remorse; and, in point of fact, remorse or any other intelligent emotion would be conclusive refutation of the allegation of idiocy or imbecility. And so, also, as to maniacs while their mania continues.[3] But, in cases of transitory mania, remorse, or a feeling of distress very difficult to distinguish

Not a proof of sanity at time of act.

[1] Schürmayer, Gericht. Med., § 519. See *infra*, § 816.

[2] See *infra*, §§ 788–823.

[3] See on this point citations in pamp. Trial of Andrews, Boston, 1868, pp. 276–7.

from it, is not prevented, after recovery, by a conviction that the act, being insane, was innocent. Persons of perfect reason often suffer acute pain and distress from injuries inflicted on others through their own mere misadventure, though there was on their part no moral blame. And such is peculiarly likely to be the case with those whose very susceptibility to mania rises from temperaments that are highly strung. It has been noticed that by such the intensity of their regret at insane misconduct is often in proportion to the intensity of their prior mania.

§ 417. On the other hand, absence of remorse is no proof of insanity. "Indifferent to the moral turpitude of the act," is sometimes unfortunately brought forward by psychological experts as indicating insanity, but there are few hardened criminals by whom this indifference is not displayed. Undoubtedly our prison reports give instances of penitent and reformed prisoners; but, among those suffering second convictions, such instances are very rare. Repentance is frequently feigned in such cases, but is rarely proved by subsequent voluntary reform. A chaplain in an English prison illustrates this by referring to a criminal who, having expressed great religious contrition, spending much time in poring over the Bible, was pardoned, and after his pardon returned the Bible to the chaplain, "because I have no more use for it."

Nor is absence of remorse a proof of insanity.

Dr. Liman tells us that he has observed a great number of murderers, whom he had watched during their period of preliminary arrest, and whom he had seen mount the scaffold or enter the penitentiary for life, whose remorseless apathy, indifference, and even levity, produced on him the most painful impressions. Such torpor, though proving a depraved moral sense, is no distinctive evidence of lunacy.

2. *Anger.*

§ 418. Anger, as related to "homicidal insanity" will be hereafter distinctively considered.[1]

§ 419. "A morbid paroxysm of anger," Dr. Rush tells us, "appears in a preternatural determination of the blood to the brain, a turgescence of the bloodvessels of the face, a redness of the eyes,

[1] *Infra*, § 586.

an increased secretion of saliva, which is discharged by foaming at the mouth, great volubility or a total suppression of speech, agitations of the fists, stamping of the feet, uncommon bodily strength, convulsions, hysteria, bleeding at the nose, apoplexy, and death. Sometimes this disease appears with paleness, tremors, sickness at the stomach, quick respiration, puking, syncope, and asphyxia. It is in this case generally combined with fear, and hence arises the abstraction of blood from the brain, and its determination to other parts of the body."[1]

[§§ 420–421 are omitted in this edition for the purpose of condensation.]

§ 422. Schürmayer very justly remarks that in practice, *anger* and *revenge* afford much less difficulty, because much more readily distinguishable from insanity than is *remorse*. With the more depraved, experience tells us that that malignant hatred which led to crime is often increased after the crime is committed, and is further aggravated by displeasure at the unfavorable testimony of witnesses. The fury of such miscreants is often directed against the judge, the keepers, and all who contribute to the execution of their sentence. In the case of Carrigan, who was convicted in North Carolina, some years since, of murder, so high did his temper run, that the defendant, immediately after the verdict of conviction was rendered, drew forth a pistol, with which he aimed a shot at the prosecuting attorney, and then shot himself.

Anger and revenge less like insanity than is remorse.

In the fierce outburst of passion, it is quite possible to mistake a man under such circumstances for a madman, particularly where there is a sentimental predisposition to the extension of this plea, and where science and skill are not at hand to correct such erroneous impressions. But these views will vanish if the examiner abstains from doing anything which may still further stimulate the passions, and preserves an imperturbable composure. If, after this, a severe reprimand is found, either at once or after one or two repetitions, to make a wholesome impression and quell the excitement, there is certainly no derangement of the faculties; for a man with mania, or under the ravings of disease, will never be restored to self-control by the voice of reason. Where the man is very wild

[1] Rush on the Mind, p. 332.

and debased, reproaches will not always answer the purpose, and it becomes necessary to menace him with coercion. The manner in which such announcements are received will also suffice to remove all doubts of his sanity.

3. *Shame.*

§ 423. The feeling of *shame* may also exert a very considerable influence on the demeanor of an accused man, not entirely lost to this sensation by a long course of vice. Shame rises and sinks with the feeling of honor: "shame is the disagreeable perception of the unfavorable opinions entertained of us by others." Men of ordinary stamp, who value external honor far above the dignity of self-respect, can imagine no more dreadful fate than degradation in the eyes of the public. By injudicious treatment such individuals may be reduced to a state closely resembling insanity, particularly in the form of melancholy, which will disappear the moment a more judicious course is resorted to.

Shame may produce a state resembling insanity.

It is not necessary for us, in order to make out the similarity of symptoms between insanity and excessive shame, to find many parallels to the story told by Dr. Benton, and cited without protest by Dr. Rush, of a schoolmaster who was accidentally discovered upon a close-stool by one of his scholars, and who in consequence became deranged.[1]

§ 424. Dr. Rush also tells us of an American Indian, who became deranged and destroyed himself, in consequence of seeing his face in a looking-glass soon after his recovery from a violent attack of smallpox. The loss of one eye by an affray in a country tavern, which materially affected the face, produced derangement in a young man who was afterwards a patient in the Pennsylvania Hospital. There are other facts which show the depth of this attachment to beauty, in the human mind, and the poignancy of the distress occasioned by its loss or decay. The once beautiful Lady Wortley Montague tells a friend, in one of her letters, that she had never seen herself in a looking-glass for eleven years, solely from her inability to bear the mortifying contrast between her appearance in the two

Instances of insanity caused by shame.

[1] Rush on the Mind, p. 38.

extremes of her life. A clergyman in Maryland became insane in consequence of having permitted some typographical errors to occur in a sermon which he had published on the death of General Washington.[1]

Suicide from shame

§ 425. A young gentleman of considerable promise, of high natural and acquired attainments, had been solicited to make a speech at a public meeting, which was to take place in the town in which he resided. As he had never attempted to address extemporaneously a public body, he expressed himself extremely nervous as to the result, and asked permission to withdraw his name from the published list of speakers. This wish was not, however, complied with, as it was thought that when the critical moment arrived he would not be found wanting even in the art of public speaking. He had prepared himself with considerable care for the attempt. His name was announced from the chair, when he rose for the purpose of delivering his sentiments. The exordium was spoken without any hesitation; and his friends felt assured that he would acquit himself with great credit. He had not, however, advanced much in his prefatory observations when he hesitated, and found himself incapable of proceeding. He then sat down, evidently excessively mortified. In this state he retired to a room where the members of the committee had previously met, and cut his throat with his penknife. He wounded the carotid artery, and died in a few minutes.[2]

4. *Grief.*

Symptoms of grief.

§ 426. Shakspeare touchingly as well as naturally describes the symptoms of that species of morbid grief which becomes monomaniac by self-confinement and self-involution:—

> "Grief fills up the room of my absent child;
> Lies in his bed, walks up and down with me;
> Puts on his pretty looks, repeats his words;
> Remembers me of his gracious parts:
> Stuffs out his vacant garments with his form;
> *Then I have reason to be fond of grief.*"

"Physicians," says Dr. Rush, "in their unsuccessful efforts to save life, are often obliged to witness this passion. It is of consequence for them, therefore, to be well acquainted with its symp-

[1] Rush on the Mind, p. 40.

[2] Winslow's Anatomy of Suicide, p. 64.

toms and cures. Its symptoms are acute and chronic. The former are, insensibility, syncope, asphyxia, and apoplexy; the latter are fever, wakefulness, sighing, with and without tears, dyspepsia, hypochondriasis, loss of memory, gray hairs, marks of premature old age in the countenance, catalepsy, and madness. It sometimes brings on sudden death, without any signs of previous disease, either acute or chronic. Dissections of persons who have died of grief show congestion in and inflammation of the heart, with a rupture of its auricles and ventricles."[1] But there are instances in which the sympathy of the heart with the whole system is so completely dissevered with grief, that the subject of it discovers not one mark of it in his countenance or behavior. On the contrary, he sometimes exhibits signs of unbecoming levity in his intercourse with the world. This state of mind soon passes away, and is generally followed by all the obvious and natural signs of the most poignant and durable grief. There is another symptom of grief which is not often noticed, and that is profound sleep. I have often witnessed it, even in mothers, immediately after the death of a child. Criminals, we are told by Mr. Akerman, the keeper of the Newgate, in London, often sleep soundly the night before their execution. The son of General Custine slept nine hours the night before he was led to the guillotine, in Paris. These facts, and many similar ones that might be mentioned, will serve to vindicate the disciples of our Saviour for a want of sympathy with him in his suffering. They slept during his agony in the garden, because their "flesh was weak," and in consequence of "sorrow having filled their hearts."[2]

§ 427. Tears, or the capacity to weep, form no test in this respect.[3] Joanna, the mother of Charles V., was never known to weep after the first shock of her husband's death, and survived him forty-five years, brooding in insanity over her loss, without, Mr. Prescott tells us, shedding a tear.[4] Insane persons are rarely known to weep.

Capacity to weep no test of grief.

§ 428. One distinction, however, may be relied on with almost certainty. Grief may be, in most cases, relieved by the counter-irritation of some affection other than that wounded; but *insanity* never.

Insanity not relieved by counter-irritation, like grief.

[1] Late researches, however, indicate such cases to be very exceptional.

[2] Rush on the Mind, pp. 346, 347.

[3] Cheyne on Derangement in Connection with Religion, p. 107.

[4] 3 Pres. Ferd. 8th ed. 260.

5. *Home-sickness* (*Nostalgia*).[1]

Nostalgia often like hysteria.

§ 429. This often assumes a shape hardly distinguishable from *hysteria*. Thus Goldsmith writes:—

> "The intrepid Swiss that guards a foreign shore,
> Condemn'd to climb his mountain-cliffs no more,
> If chance he hear the song, so sweetly wild,
> Which, on these cliffs, his infant hours beguil'd,
> Melts at the long-lost scenes, that round him rise,
> And sinks, a martyr to repentant sighs."

"It is remarkable," says Dr. Rush, "that this disease is most common among the natives of countries that are the least desirable for beauty, fertility, climate, or the luxuries of life. They resemble, in this respect, in their influence upon the human heart, the artificial objects of taste which are at first disagreeable, but which from habit take a stronger hold upon the appetite than such as are natural and agreeable."[2]

§ 430. Nostalgia, as Siebold[3] tells us, develops itself principally in that period of childhood approaching puberty. When the malady is of long continuance, it runs into voluntary starvation, sleeplessness, delirium, derangement of the senses, together with the usual melancholy consequences of unsatisfied desire. Sometimes symptoms of pyromania are discoverable. Thus we are told of a girl of ten years who exposed two children, committed to her care, to the flames, under the stress of home-sickness.[4]

May run into delirium.

§ 431. "Another variety of melancholia," says Griesinger, "is that form which is characterized by a longing for one's native land, and by the predominance of those ideas which refer to a return to one's home—home-sickness.

Nostalgia not always a mental disease.

"An analogous affection is sometimes developed in

[1] Orfila gives the following symptoms by which nostalgia may be recognized: Profound sadness to which succeeds a gloomy melancholy, silence and a great desire to be alone, a great indifference for everything which does not recall the objects regretted. Spasmodic contraction of the stomach, prostration of mind and body, marasmus, etc.—*Méd. Lég.*, vol. i. p. 331. Paris, 1848.

[2] Rush on the Mind, pp. 38, 39.

[3] Gericht. Med. § 213.

[4] See Jahrb. des Osterreich. Staates, 15 Bd., 1834, § 597. See also the article under the head of *Heimweh*, by Jesse, in the Encyclop. Wörterb. der Med. Wissensch., Band 25, Berl. 1841, § 292.

prisoners by want of employment, and frequently also by the co-operating influence of bad nourishment, damp cells, and onanism. Nostalgic melancholia is sometimes accompanied by symptoms of congestion of the head, and even of cerebral inflammation (Larrey): in this form, too, the same kind of hallucinations appear (visions of home scenes, etc.). Not unfrequently we see individuals affected with a greater or less degree of nostalgia commit acts of violence (for example, the murder of young children, incendiarism, etc., by servants). Those acts proceed more frequently from evidently selfish motives, as from the desire to escape from a forced and painful position, than from the impulse, which also comes involuntarily in the melancholic, to procure a certain degree of solace through the perpetration of some frightful deed. Naturally, home-sickness is not always a mental disease: this is of importance in a medico-legal point of view. In itself it is a mournful disposition of spirit suggested by external circumstances. It becomes insanity when this disposition so strongly impregnates all the faculties of the mind as utterly to exclude the entrance of any other sentiment and when it is accompanied by delirious conceptions and hallucinations; a state in which physical derangements—*e. g.*, loss of appetite, emaciation, etc.—are seldom absent. In short, home-sickness ought *in foro* to be regarded as a mental affection only when it presents the usual signs of insanity. The want of reflection, which is the most important point in concrete cases, ought not to be admitted when the individual is perfectly competent to engage in his usual avocations and perform his duties, as is the case with many of those young incendiaries afflicted with home-sickness."[1]

§ 431 *a*. "A recent number of the *Medical and Surgical Reporter* has a valuable paper from Dr. Calhoun, Surgeon-in-chief, 2d division, 3d corps, on nostalgia as a disease of field service. After alluding to the peculiar causes operating to produce the disease, he mentions a case of simple nostalgia, with loss of appetite and general impairment of functions, occurring in an officer, and remarks:—

May be either cause or result of other diseases.

"But I fancy that pure uncomplicated cases of nostalgia, requiring treatment, are seldom met with in the field. It is more frequently a complication or a cause of other disease. The very

[1] Griesinger's Mental Pathol., Syden. ed. 1867, § 122.

existence of nostalgia presupposes a state of mental depression extremely favorable to the contraction of disease. The typho-malaria fever and camp diarrhœa are diseases asthenic in their character, and always characterized by marked depression of all the vital functions. The state of mental depression, that is coexistent with nostalgia, acts as a predisposing cause of these diseases, or, as I have frequently found, is coexistent with them. Sometimes the nostalgia is, on the contrary, produced by other diseases.

"The patient becomes disgusted with his condition, and sighs for the comforts of home, until his yearning for home scenes becomes morbid. But, be the nostalgia the *cause* or the *result* of diarrhœa, dysentery, or typhoid fever, it is in either event a complication to be dreaded as one of the most serious that could befall the patient."[1]

6. *Fear.*

Distinction between sane and insane fear important.

§ 432. The distinction between sane and insane fear is one which is of much importance in several branches of forensic medicine. A will is made, for instance, under the influence of fear; and the question to be determined is, is the yielding to this emotion the consequence of sane or insane volition? Or a contract is made under threats; and here again the same inquiry emerges. It is true that in both these cases the question is mixed with that of *dolus* or fraud. A party cannot take advantage of his own wrong. He who, by acting on the fears even of a sane person, obtains an obligation from such person, cannot, as a general rule, enforce such obligation; and when a will is obtained by fear, it requires but slight evidence of mental debility in the testator to set the will aside.

Importance of question.

§ 433. In criminal cases, the question presents itself more squarely. A man, under the influence of fear, kills another. He may kill a supposed enemy, in what is claimed to be self-defence. Or he may kill his own children, to avoid, he may claim, some greater evil by which they are threatened. Now, is the party under such circumstances sane or insane? Is he responsible so far as penal discipline is concerned?

[1] Amer. Journ. of Ins., April, 1864.

§ 434. First, in answering this question, let us remember what fear is. Locke defines it to be "an uneasiness of the mind upon the thought of some future evil likely to befall us." It is the *futurity* of the evil that forms the essence of the emotion. Shakspeare well says that—

Usually conditioned on a contingency.

> "*Present* fears
> (*i. e.* fears that are realized)
> *Are less than horrible imaginings.*"

As the dreaded event becomes certain, fear, in its technical sense, gives way to blank despondency. Thus, if we could foresee the conflagration by which our home is to be destroyed, or the death-stroke by which one of our children is in a short time to be snatched from us, this foreknowledge would envelop us in gloom, and paralyze proportionally our energies. On the other hand, such certainty in a coming disaster may produce a calm and adequate courage which uncertainty might distract. True fear is of a contingent evil; in which case the "horrible imaginings" of which Shakspeare speaks find play. So far as concerns the *intellect*, the first effect of terror of this kind is in the highest degree stimulating. The crowds that collect around a telegraph office after a great battle; the frenzied anxiety with which newspapers are clutched; the preternatural rapidity with which their contents are mastered; the intense acuteness of the hearing when the postman's step is awaited; the vividness with which calculations are made as to the time when the news will arrive; the exhaustion which, when the result is known, measures the intensity of the prior tension; the haggard countenance; the hair which a single night's agony has turned gray; these are illustrations of the effect of fear.

§ 435. On the physical side, the immediate effects of terror vary with particular constitutions. There are some whom its first shock completely paralyzes.[1] There are others whom it prompts to rapid instinctive flight. There are others—and each of these specifications applies to the lower animals as well as to men—who are stung by it to wild and destructive resistance.

Effects of fear vary with different constitutions.

§ 436. "The appearances," says Mr. Bain, speaking of the

[1] See 19 Journ. Ment. Sci. 621.

Symptoms of fear.

physical results of fear,[1] "may be distributed between effects of relaxation and effects of tension. The relaxation is seen, as regards the muscles, in the dropping of the jaw, in the collapse overtaking all organs not specially excited, in tremblings of the lips and other parts, and in the loosening of the sphincters. Next as to the organic processes and viscera. The digestion is everywhere weakened; the flow of saliva is checked; the gastric sensation arrested (appetite failing); the bowels deranged. The expiration is enfeebled. The heart and circulation are disturbed; there is either a flushing of the face, or a deadly pallor. The skin shows symptoms of derangement—the cold sweat, the altered odor of the perspiration, the creeping action that lifts the hair. The kidneys are directly or indirectly affected. The sexual organs feel the depressing influence. The secretion of milk in the mother's breasts is vitiated. The increased tension is shown in the stare of the eye and the raising of the scalp (by the occipito-frontalis muscle), in the inflation of the nostril, the shrill cry, *the violent movements of protection or flight*. The stare of the eye is to be taken as an exaggerated fixing of the attention on the dreaded object; and there concurs with it an equally intense occupation of the thoughts in the same exclusive direction."

Relation of fear to the functions of the mind

§ 437. In order to measure, in the next place, the legal relations of fear, it is necessary to consider from what functions of the mind it springs. Describing these functions according to the definition already given, as (1) feeling, (2) will or volition, and (3) thought, we may readily conceive that fear, in its most simple and rudimental shape, may flow directly and exclusively from *feeling*. A sleeping infant, or an idiot, or an animal of the lowest grade, feels a puncture, and starts convulsively back to prevent an extension of the wound. But in almost every other conceivable case, fear is the result of feeling and thought combined. In fact, in most cases, fear involves the several powers which intellect includes—memory, perception, conception, abstraction, judgment, and imagination. If the mind be diseased, then it communicates its disease to the fear which flows from it, and this fear becomes an abnormal propensity.

[1] Mental and Moral Science, London, 1868, p. 233.

§ 438. Let us apply this to the case of a man killing another under the influence of fear. This killing may have been in order to avert the threatened danger from the person killed, or to avert it from self.

Killing under the influence of fear.

§ 439. Of the first class the principal instances are those of homicides by parents of children to preserve the children from starvation or some other impending disaster. In such cases, it is hardly possible to view the mind as sane. However it may be in barbarous lands, the systems of charity existing in Christian countries are such as to make the killing of children by parents to avoid starvation explicable only on one of two grounds—diseased imagination amounting to actual insanity, or diseased pride by which such insanity is closely approached.

1. To avert threatened disaster to person killed.

§ 440. But much more complex questions arise when insane fear is set up to excuse the killing of another in supposed self-defence. To consider these questions we must inquire what is the effect of fear on persons of imbecile or disordered intellects.

2. In supposed self-defence.

§ 441. First, as to the imbecile. On this point some interesting observations are made by Professor Lazarus, in the *Zeitschrift für Völkerpsychologie* for 1868.

3. In the case of imbeciles.

"We often find in our lunatic asylums a general, and it may be even said absolute, fear (Schreckhaftigkeit, Pantophobia), which with us is a symptom of deep disease, but which is mentioned by travellers as a not unusual occurrence among nations of a low order of development. . . . Does it not seem when we enter a ward containing nymphomaniac or similarly affected patients, as if we had entered into a company made up of parties of Laps, or Jakutes, whom Castren and Erman describe: 'A woman, alarmed by a sudden clapping of the hand, tore about as if frantic, biting and scratching all who were by. Another, when alarmed, threw her child in the sea. A blow having been struck by a hammer on the outer wall of a hut in which some Laps were sitting in careless conversation, they all fell instantaneously on the ground, twitched for a moment with their hands and feet, and then lay as motionless as corpses. After awhile they began to move again, and then behaved as if nothing unusual had happened.' This last peculiarity is highly characteristic. 'The East-Jaken, like the Laps,' remarks

Bastran, 'are very timid, and are frightened (as in Pantophobia) by the merest trifles. . . . Every unexpected movement, every call or whistle, and every surprise makes him beside himself, *and throws him in a sort of rage.* By the Samojedens *this rage is so great that, without knowing what they do, they seize the first axe, knife, or other weapon, and seek to wound the bystanders.*'"

Cases of a similar character are not unknown to our criminal reports. Men of weak minds have been so affected by fear as in their frenzy to strike down innocent strangers, and especially is this the case with epidemic fears. Now, in such cases, the inquiry is, was the defendant imbecile, or, at the best, of a low grade of intelligence bordering on imbecility? If he was, his action, in a paroxysm of fear, was insane. But this mental imbecility must be substantively proved.[1] *Fear* itself is no defence; for otherwise there is no act of violence that could not be thus defended.

Fear with those whose intellects are disordered.

§ 442. The same distinction applies when the defence is an insane delusion as to the person by whom the defendant believes himself to be endangered. A man conceives that another is about to kill him, or to inflict on him maiming or other great injury; and in supposed defence the assailant is intentionally killed. The plea of insanity, as is elsewhere shown,[2] may be rightfully interposed where the defendant is acting under an insane delusion which, if true, would relieve the act from responsibility, or where his reasoning powers are so depraved as to make the commission of the particular act the natural consequence of the delusion. Even where there is no pretence of insanity, it has been held, that, where a man, *according to his own lights*, has reasonable ground to believe himself in danger of death, this would be a good defence.[3] Such, indeed, was the ground of the ruling in Levet's case; a case which has stood the test of two centuries, and which may be viewed as at the basis of the English common law. The defendant, in that celebrated case,[4] was abed and asleep in his house, when he was told that thieves were breaking in; and, in his fright, with his mind still torpid with sleep,

[1] See articles in 1 Alienist and Neurologist, 106; 18 Journ. Ment. Sci. 235.

[2] *Supra*, § 125.

[3] Ibid. This is fully shown in Wh. Cr. L. 8th ed. § 491 *et seq.*

[4] Cro. Car. 438; 1 Hale, 42, 474.

dashed down stairs, and ran his sword through a visitor who was aiding one of the servants of the family. This was held homicide by misadventure; nor has this ruling ever been questioned. Nor, though there is some conflict of decision when the defence set up is simply weakness of intellect not amounting to imbecility, can it be questioned that a similar result will follow in all cases where the offence was the product of fear so shaped by an insane delusion as to make the killing of the supposed assailant appear to the offender to be the only means by which his own life could be preserved.

I. SIMULATED INSANITY.[1]

[*For cases of simulation, see Appendix to third edition of this work*, §§ 834, 835, 836, 843.][2]

1. *Examination.*

§ 443. In every case the examining physician will be led at once to inquire, whether the apparent abnormal state of mind be real or feigned. One thing, however, must not be overlooked, and this is that impostors of this kind are very rarely able to keep up the character of the disease assumed

Detection of feigned insanity.

[1] In relation to simulated insanity, M. Orfila says, that, as there exists in the world a very false idea of madmen, the one who simulates insanity, after this idea, will perform, at every instant, contradictory and false acts; thus, he will pretend not to remember his past actions, he will not recognize those whom he knows very well, he will not make a single correct reply to questions that are addressed to him. His features will not have the expression of such a violent condition; he cannot for so long a time prevent himself from sleeping; he will play the fool particularly whilst he thinks himself observed; finally, his pretended malady will not have developed itself until he feared the pursuit of justice; it will not have been preceded by that originality of character, by those marked symptoms of moral disorder which are observable in the majority of cases of insanity.—*Méd. Lég.*, tome i. p. 400. Paris, 1848. See also Méd. Lég., J. Briand, p. 396. Paris, 1852. See, on this point, Principles of Medical Psychology, being the outlines of a course of Lectures by Baron Ernest von Feuchtersleben, M.D. Vienna, 1845. Translated from the German by the late H. Evans Lloyd, Esq. Revised and edited by B. G. Babington, M.D., F.R.S., etc. London, printed for the Sydenham Society, 1847, p. 376. See, also, an article by Dr. Bucknill, 13 Am. Journ. of Ins. 354; and essay by Dr. W. S. Chipley, in 22 Am. Journ. of Ins. 5.

[2] See, also, cases reported in 18 Journ. Ment. Sci. 390; Waltz's case, rep. 31 Am. Journ. Ins. 50; Gaffey's case, 35 Am. Journ. Ins. 534; Barr's case, *ibid.* 411; also an article in 31 Am. Journ. Ins. 24.

with consistency, and without involving themselves in contradictions. "How hard it is on the stage," remarks Dr. Bucknill,[1] "and for a few minutes only, for a man to represent the manners of a sailor, a peasant, an old man, or any other characteristic manners, so that the deception shall be acknowledged complete! But the histrionic powers of a feigning maniac or melancholic must be kept for days and weeks on the stretch in the representation of manners and modes of thought far more difficult to imitate than those which are usually the subject of theatrical art. Dr. Rush is reported to have discriminated feigned from real insanity by the relative rapidity of the pulse; Dr. Knight and other writers have claimed the same power for the sense of smell. At the present day the deposits in the urine would, we suppose, be appealed to. Much reliance, however, is not to be placed upon any one, or even upon several, of the physical signs of nervous disturbance. They have a scientific but scarcely a diagnostic value. They may serve to direct the inquiries of the physician, or even to confirm his opinion founded upon other data; but standing by themselves they are of little importance in the diagnosis of insanity."

Close observation of subject necessary.

§ 444. It is important, to adopt here the precaution prescribed by Schürmayer,[2] to watch the subject most closely when he supposes himself least observed, as at such times he generally drops his mask, which is irksome to him. In all such investigations the physician must never show the most trifling sign of doubt or hesitation; he must, on the contrary, appear to know everything, in order to discover everything, and must present a firm and imposing front in all his intercourse with the accused. Where the disease in question is of such a nature, as, if genuine, to interfere with or suspend sleep, it becomes necessary to watch the patient unobserved at night. To subject him purposely to mental irritation or excitement is improper, reprehensible, and liable to cause harm. Threats of painful medicines or operations are in Germany admissible where the processes threatened are really indicated by therapeutics, but the execution of such threats must depend upon the principles laid down in another part of this work, in reference to the tests applicable to feigned bodily diseases.

[1] Bucknill on the Diagnosis of Insanity.

[2] Gericht. Med. § 392. See §§ 341-344.

2. *Reasons for suspecting.*

§ 445. Schürmayer gives the following reasons for suspecting dissimulation or deception :—

1. When the party has committed some act, the punishment of which he would escape by inducing a belief in his aberration of mind, in this case the comparison of the offence committed, with the form of mental disease assumed, will often suffice to confirm the suspicion.[1]

2. When the individual has frequently expressed an aversion to a particular occupation or profession he is expected to assume, as, for instance, that of a soldier.

3. When the general character of the party is open to imputations of malice and deceit.[2]

4. When it is impossible to discover any previous indications, physical or mental, of the pretended derangement of the mental faculties.[3]

A late German trial brings before us a state of facts well worthy of being considered by those concerned in religious and moral education. The parents of two girls, one eleven and the other fifteen, claimed public relief on the ground that the latter were subject to epileptic fits. The patients were for months subject to medical scrutiny, and were received into a hospital, where, during intermission, as well as of paroxysm, they were under constant observation. The elder, in particular, was affected by the disease in its worst shape ; being prostrated by convulsive attacks of extraordinary violence, which afterwards left her in a state of entire exhaustion. Suspicion, however, was aroused as to the entire sincerity of the patients, and one of the hospital officers, against the vehement protestations of the medical attendants, threatened the eldest of the two with severe discipline in case she should have another fit. The attempt was successful. No fit was repeated ; and the children confessed that, partly to excite sympathy, partly to obtain money, the disease had been simulated.

In connection with this, we may observe the following remarks of Dr. Carter, in his work on the Influence of Education on Diseases of the Nervous System :—

[1] Compare Heinroth, System der psychisch gerichtlichen Medizin. Leipsic, 1825, p. 453.

[2] Heinroth, Medizinische Zeichenlehre. Ausgabe von Danz. Leipsic, 1812, p. 380.

[3] Friedreich, Handbuch der gerichtlichen Psychologie, p. 155.

"When once a young woman has discovered her power to produce a hysteric paroxysm at will, and has exercised it for her own gratification without regard to the anxiety or annoyance it may entail on her friends, a very remarkable effect is speedily produced upon her whole mental and moral nature. The pleasure of receiving unwonted sympathy, once tasted, excites a desire for it that knows no bounds; and, when the fits have become familiar occurrences and cease to excite attention, their effect is often heightened by the designed imitation of some other disease." Then, in the words of Dr. Carter, "pleasure is morbidly associated with many ideas which ordinarily excite pain. The girl, though originally amiable and disinterested, derives a strange satisfaction from the sight of the anxiety, and even the distress of her friends; and thus proverbially enjoys the idea of deceiving them."

Another writer thus speaks: "A person in the shattered state of mind that follows some sudden affliction, finds the sympathy of friends excited by very demonstrative grief. This in itself to many minds is a natural outlet, and then with that strange selfish cunning which never tempts the heart so fiercely as in such moments of desolation, the paroxysms of grief are so timed as best to attract the attention and secure the sympathy of those around. When coarse ordinary grief ceases to do this, new forms of broken-heartedness are partly felt, partly feigned. Food is often refused. Sleep is rejected. Very often these conditions, from being partly affected, become wholly real. And yet, strangely enough, the sufferer, when he thinks himself unobserved, will desist from them. He will put on his mourner's air when he knows he is looked at; but, when he thinks himself unobserved, will permit himself to be diverted. The only cure in such a case is for those about not to pamper the hysteria, if such it be, by petting and soothing it, otherwise it may become irradicable."

3. *Forms generally simulated.*

Delirium the form of insanity most usually simulated.

§ 446. The species of mental unsoundness most frequently imitated by the vulgar is *delirium*—which, at the same time, is that which it is the most difficult to sustain. Sheridan, with his usual tact, hit upon this when he made the mock-author in the Critic throw his heroine into precisely this stage:—

Enter Tilburina and confidant, mad, according to custom.

Sneer. But, what the deuce, is the confidant to be mad, too?

Puff. To be sure she is; the confidant is always to do what her mistress does; weep when she weeps, smile when she smiles, go mad when she goes mad. Now, madam confidant—but keep your madness in the background, if you please.

Tilb. . . . The wind whistles—the moon rises—see,
They have kill'd my squirrel in his cage!
Is this a grasshopper?—Ha! no; it is my
Whiskerandos; you shall not keep him—
I know you have him in your pocket.
An oyster may be crossed in love!—who says
A whale 's a bird?—Ha! did you call, my love?
He 's here! he 's there! He 's everywhere!
Ah me! he 's nowhere! [*Exit.*

Puff. There, do you ever desire to see any body madder than that?

Sneer. Never while I live!

Puff. You observed how she mangled the metre?

Dang. Yes—egad, it was the first thing made me suspect she was out of her senses?

Sneer. And pray, what becomes of her?

Puff. She is gone to throw herself in the sea, to be sure; and that brings us at once to the scene of action, and so to my catastrophe—my sea-fight, I mean.

§ 447. Yet it is much more easy to counterfeit imbecility in its lower stages, as *in*action rather than *action* is then required.

Yet imbecility easier to feign.

"The feigning madman in all ages has been apt to fall into the error of believing that conduct utterly outrageous and absurd is the peculiar characteristic of insanity. The absurd conduct of the real madman does not indicate a total subversion of the intelligence; it is not utterly at variance with the reasoning processes; but it is consistent either with certain delusive ideas, or with a certain perverted state of the emotions. In the great majority of cases, feigned insanity is detected by the part being overacted in outrageousness and absurdity of conduct, and by the neglect of those changes in the emotions and propensities which form the more important part of real insanity. Sometimes mania is simulated—the man howls, raves, distorts his features and his postures, grovels on the ground, or rushes about his room and commits numberless acts of violence and destructiveness. If he has had the opportunity of observing a few cases of real insanity, and if he is a good mimic, he may succeed in inducing a person who only watches him for a

few minutes to believe that he is in the presence of a case of acute mania; but if the case is watched for a few hours or days, the deception becomes apparent. No muscular endurance and no tenacity of purpose will enable the sane man to keep up the resemblance of acute mania; nature soon becomes exhausted, and the would-be patient rests, and at length sleeps. The constant agitation, accompanied by symptoms of febrile disturbance, by rapid pulse, foul tongue, dry and harsh or pallid, clammy skin, and long-continued sleeplessness of acute mania, cannot be successfully imitated. The state of the skin alone will frequently be enough to unmask the pretender. If this is found to be healthy in feeling, and sweating from the exertion of voluntary excitement and effort, it will afford good ground for suspicion. If after this the patient is found to sleep soundly and composedly, there will be little doubt that the suspicion is correct.

"Chronic mania may be imitated; and if this should be done by an accurate observer of its phenomena, who also happens to be an excellent mimic, it cannot be denied that the imitation may deceive the most skilful alienist. It is remarkable that two of the most perfect pictures of insanity presented to us in the plays of Shakspeare are instances of feigned madness—namely, the madness of Hamlet, assumed to escape the machinations of his uncle, and that of Edgar, in Lear, assumed to escape the persecutions of his brother. These inimitable representations of the phenomena of insanity are so perfect that in their perusal we are insensibly led to forget that they are feigned. In both instances, however, the deception was practised by educated gentlemen; and on the authority of the great dramatic psychologist it may, perhaps, be accepted that the phenomena of insanity may be feigned by a skilful actor like Hamlet so perfectly that no flaw can be detected in the representation. Fortunately for the credit of psychologists, insanity is rarely feigned except by ignorant and vulgar persons, who are quite unable to construct and to act out a consistent system of disordered mind. It must be remembered that all the features of every case of insanity form a consistent whole, which it requires as much intelligence to conceive and to imitate, as it does to conceive and to imitate any dramatic character. The idea which the vulgar have of madness is of quite a different kind. They represent it as a monster, half man, half beast; the emotions they repre-

sent unchanged and human, the intellectual functions they represent entirely perverted, grovelling, and bestial. They think that madness entirely alters the character of a man's perceptions and utterly destroys his judgment, so that he not only ploughs the shore and sows salt for seed, but that he cannot recognize his own son or avoid the destruction of his life. In more homely cases it will be found that men feigning insanity pretend that they cannot read or write, or count ten correctly, or tell the day of the week, or how many children they have; they answer every question wrongly, which a real lunatic, who could be made to understand the question and to answer it at will, would certainly answer right."[1]

§ 448. The simulation of mania is beset with peculiar difficulties, arising from the fact just mentioned, that most simulants assume that maniacs reason illogically from logical premises, instead of logically from illogical premises. But, as a general rule, the maniac follows, in mental processes, the necessary laws of association.[2]

Mania difficult to feign.

§ 449. The simulation of entire oblivion, as to the *res gestæ* of guilt, is a common but at the same time a suspicious device of experienced offenders.[3] The risk of this arises from the fact that the conditions in which actual amnesia intervenes are well known in medical science, and their absence betrays the simulation. Thus the simulant is ready enough to betray a remembrance of exculpatory facts coincident in time with the condemnatory facts which he sedulously forgets; and he is apt to fluctuate in the limits which he assigns to his oblivion even of inculpatory incidents. It is, as Dr. Krafft-Ebing[4] pertinently remarks, peculiarly suspicious, when oblivion suddenly protrudes itself after arrest. On the other hand, cases are not rare where persons of weak mind, shocked by a sudden accusation of guilt of which they are innocent, have broken down mentally and nervously under the charge, and have become actually deranged. An unreported case may be mentioned as illustrative of this position. An American clergyman of respectability was charged, and on evidence

Simulated oblivion frequent.

[1] Bucknill on Diagnosis of Insanity.

[2] See on this Dr. Krafft-Ebing's Essay on Simulation, in Friedrich's Blätter for 1871, p. 163, and Combes's Annal. Med.-Psy., 1866, p. 349, and see a learned essay by Dr. Nicholson in the Journal of Mental Science for Jan. 1870.

[3] See *supra*, § 410.

[4] Friedreich's Blätter for 1871, p. 168.

of much strength, with a serious sexual crime. He was thrown into a state of the highest nervous and mental excitement by the charge, made an incoherent confession, and then fled the country. It subsequently transpired that the charge was fabricated from beginning to end, that the whole process was one of black-mailing, and that the fugitive, whose mind was actually upset by the charge, was entirely innocent. And, independently of the moral shock produced by an accusation of guilt, imprisonment, by itself, may produce insanity.

Physiognomy and health to be examined.

§ 450. The physiognomy of mature madness does not admit of imitation—though the case is otherwise with imbecility. The demeanor of the individual under threats, or even under the application of painful remedies, is a criterion of inferior value, because skilful imposters withstand the test, and because many who are really affected, particularly before the disease has assumed a settled character, manifest fear and dread of such remedies, and retain, in a considerable degree, sensibility to pain. The torpor of the stomach and bowels under the use of emetics and purgatives is equally unreliable, because the same condition is found unconnected with unsoundness of mind; of greater value is sleeplessness, which a deceiver will not long sustain after the fashion of lunatics.[1]

Comparison of cases the surest test.

§ 451. The shortest road to certainty[2] is by comparing the case in hand with those recorded or experienced, and by a strict application of the inductive tests. Experience teaches that the various abnormal conditions of the mind have certain symptoms in common, by means of which they admit of being arranged in greater or smaller subdivisions, and finally of being reduced to certain clearly defined forms and combinations of forms. Although every case, to a certain extent, furnishes its own rule, yet this logical process will be of great avail in detecting dissimulation, on the one hand, or groundless imputation of insanity, on the other. The more the phenomena of a case of alleged insanity subject to examination differ from recorded observations, or the more a person of dubious insanity presents an

[1] Schürmayer, Gericht. Med. § 533. See *supra*, § 345.

[2] Ellinger, Ueber die anthropologischen Momente der Zurechnungsfaehigkeit, p. 97.

array of symptoms at variance with the form of the disease to which they ought to belong, the more reason is there to guard against deception.[1] At the same time, it must be admitted that the science of psychical medicine has not attained such a degree of perfection, as to exclude entirely the possibility of cases arising which would not admit of being classed with any of those already observed and noted. At times they incline to mere moral perversity, and are often treated as such for years; or the disease itself is not yet clearly developed; or, finally, it has apparently ceased, or arrived at a stage in which the patient is able to control and direct his condition, as a drunkard his intoxication.[2]

4. *Not proved by sanity at trial.*

§ 452. For the following reasons, simulation is not always to be inferred from the absence of insanity at the time of the investigation:—[3] Reasons for this.

a. Patients, whose minds are unsound on one subject only, have the power of burying their madness in their own hearts, to such an extent as to betray no sign of derangement in the course of the examination; because it is not necessary that the disturbance of one function should impair the apparent action of the others. There are many cases, which have been in part noticed, and some of which will appear in the course of the following pages, in which the sufferer is insane on one subject alone, while all the other operations of his mind proceed as if unimpaired, so that any one unacquainted with the fixed idea which controls him would pronounce him perfectly rational.[4]

b. It is established by experience, that lunatics, even when their disease is not that of monomania, enjoy intervals in which their understanding has not only its normal vigor, but even displays uncommon powers.[5]

c. A genuine mental disease may be suspended or removed by

[1] Marc, Die Geisteskrankheiten, etc., vol. i. p. 104.

[2] Schürmayer, Gericht. Med., § 533.

[3] Compare Friedreich, p. 165.

[4] Compare Wagner, Beitrage sur Philosophischen Anthropologie, Vienna, 1794, vol. i. p. 114. Perfect, Annalen einer Anstalt für Wahusinnige, Hanover, 1804, p. 341. Esquirol, Note sur la monomanie homicide, Paris, 1837, p. 3.

[5] Muratori, Ueber die Einbildungs Kraft, Leipsic, 1785, vol. ii. p. 8. Reil's Rapsodien, p. 76.

the very circumstance which gives rise to the investigation, in analogy to the cases of madmen restored to health by great mental and moral shocks, as well as of persons attempting suicide from melancholy or despair, who are cured of their folly by the impressions received while making the attempt.[1]

Pretended insanity may turn into real.

§ 453. Another consideration which must never be lost sight of in investigations of the kind is this, that a pretended mental disease may turn into a real one.[2] A man who makes every effort to appear deranged may be so much affected by his efforts that what he pretends may assume a reality in his mind, and he become in fact insane.[3] In conclusion, there is also a class of cases in which genuine paroxysms of madness alternate with pretended ones, which calls for especial caution in pronouncing upon them.[4]

5. *Tests.*

[*See cases, in 3d edition*, §§ 834, 835, *and particularly* § 836.]

Suggestions for the discovery of concealed insanity.

§ 454. There are persons of unsound mind, who, in the incipient stages of the disease, retain sufficient consciousness to endeavor, for various reasons, to conceal their malady. A continued attentive observation of such individuals will, however, suffice, in general, to furnish the data for a correct view of the case. But even in cases of confirmed insanity, an *occult condition*, so called, may occur, in which the madman tries and manages to conceal his ailment, or rather his impulses, fancies, and feelings. This is particularly frequent in lucid intervals and in partial insanity.[5] To interrogate the patient directly to the point is of very little avail, for, if he is anxious to conceal his madness, any questions will inspire him with a suspicion

[1] Etudes Medico-Psychologiques sur l'Alienation Mentale, par L. F. E. Renaudin, chap. ix. p. 522. Paris, 1854.

[2] For an interesting essay on Monomania induced by imitation, see 1 Am. Journ. of Insan. 116.

[3] Ibid. 172.

[4] Compare Neumann, Die Krankheiten des Vorstellungsvermoegens, Leipsic, 1852, p. 397. And Pye, Aufsaetze, etc., aus der gerichtlichen Arzneiwissenschaft, third series, p. 219. And see particularly Schürmayer, § 535, whence the above observations are drawn.

[5] Friedreich, Diagnostik, p. 38; and his Handbuch der gerichtlichen Psychologie, 175.

of the questioner which must frustrate all such efforts. Under such circumstances, the following suggestions will be found useful:—

a. By bringing the patient into a succession of different relations of life, and regarding closely the effect produced upon him, some indications of his fixed ideas may be made to escape him. If the subject of his lunacy is thus brought into question, by contradicting his views in connection with it, the perversion of his intellect will be doubly apparent.

b. It is, as has been heretofore shown,[1] important to furnish the party with pen, ink, and paper, and induce him, under some pretext or other, to write; he will not be able to refrain from setting down something which will throw more or less light on the nature of his derangement.

c. Heindorf proposes that the physician should narrate the patient's own history, or so much of it as he had learned or could surmise, to the patient, as the history of the physician; this is to enlist the confidence of the patient and make him suppose a parallel between his own case and that of the examiner, so that the *dulce habere socium malorum* may elicit circumstances which he would otherwise have concealed.

d. A similar proposal is to associate the individual with another, of equal rank, degree of education, social position, etc., with himself, as a confidant, as persons of this description generally display more frankness towards people of their own order, than towards those whom they regard as above them. This idea, however, it will be easily seen, is very difficult of practical application.

The tests which may be applied at a medico-legal examination have been noticed under a previous head.[2]

Though patients of this kind may *conceal*, they can never *deny* their fixed ideas. Many persons, says Heinroth, who, in a healthy state, had no scruples in telling a large series of falsehoods, whenever their interest required it or a confession of the truth would subject them to a disagreeable exposure, forget all this the moment they have a fixed idea to maintain. Then they overlook every advantage, and stand at no absurdity and no disgrace. To hold fast the fancy which enchains them, is their only aim. If the physician can discover this fancy, he has but to ply the party with questions

[1] *Supra*, § 386.

[2] *Supra*, §§ 345–382.

in reference to it, to make him betray himself, and in many cases disclose more than the inquirer had ever thought of investigating.

Artificial tests sometimes used.

§ 455. *Artificial instrumentalities*, though sometimes of doubtful propriety, have been not infrequently used to test simulation. The consequence may be at least to relieve the question of doubt. Thus Dr. Stoltz, in an essay in the *Wiener Med. Wochenschrift* for 1870, mentions an instance where chloroform was employed in such a way as to show that the plea of irresponsibility was well-founded. The patient purported to be deaf and dumb, and he was narcotized, with the expectation that, if he was really capable of speech, this capacity would exhibit itself, either when he was in the condition of trance, or in the process of recovery of consciousness. He was placed under the influence not only of alcohol, but of chloroform, without an articulate sound being produced. The conclusion was that his disease was not feigned. In cases of simulated insanity, Dr. Stoltz is strongly of opinion that chloroform and ether may be successfully used as detectives. Dr. Nicholson, in the *Journal of Mental Science* for January, 1870, expresses the same opinion as to the use of electricity; though as a general rule, he considers the use of artificial agencies in such cases as objectionable on moral and humane grounds.[1]

Periodicity a test where it is a condition of insanity.

§ 456. *Periodicity* is a necessary condition, as has been seen, of certain phases of insanity, and when this periodicity fails, when, in other words, the symptoms which should be periodical and intermittent are exhibited in unintermitting constancy, then there is serious ground for suspicion.

§ 457. By counsel who are charged with examining alleged lunatics, the following points may be kept in mind:—

Silence or evasion of questions is suspicious.

a. Silence or evasion of questions, on the plea of weakness of memory, or confusion of thought, is always suspicious. It is, as is well known, and as was conspicuously illustrated in the case of the Italian witnesses produced to criminate Queen Caroline, the usual resort of a witness who fabricates a case, and who has skill enough to know that full and free replies will involve him in contradictions. To the idiot, it

[1] See appendix No. ix. 3d ed. of this work.

is true, or the maniac whose phase is silence, silence is natural; but cases such as these are capable of abundant proof *aliunde*. The imbecile, however, and the person laboring under the ordinary phases of amentia, is talkative enough, and answers where he can, whether coherently or incoherently. Suspicion should be peculiarly aroused when the examinant, on the plea of weakness of mind, avoids answering, not merely those questions concerning which such weakness might naturally be pleaded, but those which concern facts which must be indelibly imposed on the memory, such as parents, place of education, prominent places of abode. The tendency of true imbeciles to vague and rambling conversation is unmistakable. Their attention is not to be fixed on the examiner; their eyes wander around the room, and, if they see a relative or friend, they look to such dependently to help them to a reply; they often repeat feebly to themselves the question, as if to lead them in their reply.

b. § 458. The allegation of "delusion," or "hallucination" is one which the real lunatic rarely advances. Just because he believes in these fancies, he is loath to speak of them when under examination, because he is loath to have them the subjects of criticism. The difficulty, indeed, of extracting from the real lunatic a confession of such beliefs, is well known; sometimes the most experienced examiner is baffled for hours, and the secret is at last only elicited by a surprise.[1] On the other hand, simulants are apt to push such alleged delusion, especially that of "persecution," prominently forward, forgetting that for a person to declare that he suffers under a delusion that he is persecuted, is to admit that he knows that he is not persecuted at all.[2]

Real lunatics rarely acknowledge delusions.

c. § 459. Most difficult is it for the simulant to play consistently for any length of time his feigned part. He has, in the first place, to select intelligently some one particular phase of insanity, for such phases are several, with very distinct characteristics. He must then, when he writes, or when he speaks, in the court room, and in his chamber when he believes himself unobserved, in periods of lassitude as well as in periods of excitement, preserve these characteristics. In this even

Consistent simulation almost impossible.

[1] See *supra*, § 378.

[2] See *supra*, § 385.

the most consummate actors would fail; and simulants of insanity are not often consummate actors. They generally seize upon delirium, and in this, if they are long watched, they are betrayed by their over-acting when they think themselves watched, and their repose when watching appears to them to have ceased. The real maniac, also, is laboring under a nervous excitement which makes him sleepless, and invests him with singular and persistent muscular vehemence. The simulant has no such abnormal frenzies; he must sleep and rest, as a recruiting process for his very simulation. This, however, is but a single type. The simulant may select some other; often some of which he may have had opportunity of personal observation. But in the long run similar discrepancies will be betrayed. And again, there are some signs which it is very difficult to imitate. Muscular twitching; vague simpering and self-talking both when alone and in company; the eye, whether lack-lustre or wild; these no mimic can persistently feign.

d. § 460. Yet it must not be forgotten that simulation does not exclude insanity. Epileptics, and persons subject to hysteria, are apt to exaggerate some symptoms, and simulate others. But this kind of simulation confines itself to those symptoms which are likely to attract sympathy, such as delusions and nervous or physical disease. Simulated mania or idiocy rarely is attempted except by the responsible or sane.

But simulation does not exclude insanity.

CHAPTER IV.

MENTAL UNSOUNDNESS AS CONNECTED WITH PHYSICAL DISORDERS.

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I. AS CONNECTED WITH DERANGEMENT OF THE SENSES, AND DISEASE.

1. *Deaf and dumb.*[1]

(*a*) *Psychologically.*

§ 461. The *deaf and dumb*, where their infirmity is congenital, or contracted in early infancy, are always in an abnormal mental and moral condition, owing to the absence of hearing and speech, the two main faculties for culture.[2] For this reason, only the permanently and absolutely deaf and dumb come now under consideration, and in such cases the point of inquiry will be the degree of development of the mental and moral powers, that is to say, of the power of understanding the consequences and the wrongfulness of the act com-

Responsibility of deaf-mutes conditioned on education.

[1] See an interesting treatise on this point, 8 Am. Journ. of Ins. 17. L. Krahmer, Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851, § 122. A valuable essay by Dr. E. Peet on Deaf-mutes will be found in the Proceedings of the N. Y. Med. Leg. Soc. (N. Y. 1872) pp. 516–545.

[2] Friedreich, Handbuch der Gerichtlichen Psychologie, p. 659.

mitted. What will always exert great influence is the question whether the deaf and dumb person has received any, and what instruction; where no instruction has been efficient, there is always great reason to conclude that the psychological conditions are wanting upon which moral responsibility depends.[1] The most difficult part of the task is always the examination of the individual, which, to lead to a reliable result, requires the assistance of an adept—that is to say, a teacher of the deaf and dumb. In pronouncing upon such cases, it must not be forgotten that the permanently and absolutely deaf and dumb have a peculiarly irascible disposition, and that many of them, especially those whose features are marked by froward, morose, gloomy, and sinister expression, and more or less resemble those of the cretins, are born with a tendency to deceit, malice, cunning, duplicity, and cruelty.[2]

§ 462. In regard to the form and manner in which the intellectual condition of the deaf and dumb should be examined and probed, Hoffbauer and, after him, Freidreich have given a series of directions substantially as follows: Where the deaf and dumb person is able to understand spoken words by following the motions of the lips, the inquirer must speak distinctly and with marked articulation, so as to enable the patient to see what he says. Where oral examinations are impracticable or unsatisfactory, the scrutiny, if possible, must be made in writing, when it becomes especially important to propound simple questions, intelligible to every one. But they must not be such merely as the patient is likely to expect beforehand, for these might be answered promptly and correctly; not, however, because he has properly examined into and understood their meaning, and properly concentrated in his own thoughts the answer he returns, but because he considers the question as written down, without thinking further about it, as a request to commit to paper that which may be a mere mechanical form. And yet so long as these answers are correct, or, if not correct, at least congruous, there is room to believe that the questions were understood by the patient, and that he is able, to a cer-

Tests of capacity.

[1] See J. Briand, Méd. Lég., article sur la surdi-mutité, p. 569, Paris, 1852. See also M. Orfila, Méd. Lég. sur la surdi-mutité, tome i. p. 460, Paris, 1848. Also, Traité des maladies de l'oreille et de l'audition, par Itard, vol. xi.

[2] Schürmayer, Gericht. Med., § 562.

tain extent, to make himself intelligible to others by means of writing. But the contrary does not appear if his answers are incongruous. But if several answers are incongruous, and particularly if it is found that a certain number of answers are constantly repeated, no doubt remains that the individual, however capable of tracing written characters, is not able, in the proper sense of the word, either to read or write. Where it is necessary to converse with the deaf and dumb person by means of signs, and for this purpose to call in the assistance of an expert, the capacity of the latter must be so far taken into account as to obtain the assurance that he will speak and interpret according to the intention of the judicial purpose had in view; for which reason it will be important to instruct the interpreter fully on this subject. It may also be necessary, and is declared indispensable by some,[1] to employ two interpreters at the hearing. Itard is of opinion that the intellectual capacity of a deaf and dumb person should be tested by a written colloquy, and that, if incapable of taking part in such communications, he is to be looked upon as lacking the necessary instruction, and idiotic. The same high authority further remarks that, if a deaf and dumb man denies having received any instruction, in the hope of escaping punishment on the score of ignorance, the proper course is to accuse him of a graver crime, and one of another character from that imputed to him,[2] and that, on the whole, a deaf and dumb man who understands the questions asked of him in writing is much the same as a man entirely *compos mentis*. Marc says that, when the responsibility of a deaf and dumb person who has been taught to converse is in question, a hearing should be had, without any judicial preparation, under the form of a conversation on general subjects entirely foreign to the offence committed, from which, by an association of ideas, a transition should be effected to general questions of morals and social order.

Capable of instruction.

§ 463. "There is but little difference," says Orfila, "between the uninstructed deaf and dumb and the idiot, and such is the affinity existing between these two conditions of the intelligence, that more than the fortieth part of the deaf and

[1] Kleinschrod.

[2] If he knows how to write, he will have immediate recourse to this method in order to justify himself, and will thus show the whole range of his intelligence.

dumb are afflicted with idiocy. It may be that this mental incapacity is the result of inaudition, or it may depend upon the same cause that paralyzed the auditive sense. It should be observed, however, that the idiot is incapable of learning, whilst the deaf and dumb, on the contrary, can receive an almost complete education. Even if the uninstructed deaf and dumb do not know all the consequences of certain criminal actions, still they are not slow in learning that these actions are censurable, and even that they are the subject of punishment."[1] But, though a party seeking to charge an uneducated deaf-mute has the burden on him of proving some degree of intelligence on the part of the defendant, yet, when this is shown, the defendant can no longer plead his disability as a bar.

(*b*) *Legally.*

§ 464. In addition to the former remarks on this point,[2] it may now be stated:—

Prima facie capable of business and responsible.

a. The deaf and dumb can exercise control over property. In 1754, a woman born deaf and dumb, upon arriving at the age of twenty-one years, applied to the English court of chancery for the possession of her real estate, and for the enjoyment of her personal estate (it is presumed that she had been previously under the control of a guardian). Upon her appearing before the chancellor, Lord Hardwicke, he put questions to her in writing, and, receiving suitable written answers, her application was granted.

b. They can take by descent, a point which we believe has never been disputed.

c. When otherwise of disposing capacity, they can make a valid will.

d. Even though uneducated, if capable of intelligently bargaining (though it seems the burden of proving this is on the party seeking to charge them), they may make a valid contract, or convey real and personal estate.[3]

e. If *compos mentis* they can contract matrimony.[4]

[1] Méd. Lég., tome i. p. 460. Paris, 1848.

[2] *Supra*, § 95.

[3] See *supra*, §§ 95–98.

[4] Swinburne on Spousals, cited 13 Am. Journ. Ins. 127.

f. They can be examined as witnesses in courts of justice ; and for this purpose it is proper that their testimony should be interpreted through media which they best understand.[1]

g. They are legally responsible for crimes in the same way as other persons, though, in determining the question of sanity, their disability, when not removed by education, should throw on the prosecution the burden of proving them to have some degree of intelligence.[2]

" The favor of courts and jurists may also be justly invoked for a deaf person in cases where he has acted under erroneous impressions natural to one in his circumstances. Deaf-mutes, and deaf persons who are not quite dumb, are often suspicious and irritable, from their inability to hear and take part in what is going on around them. They sometimes take as intentional annoyance and insult gestures of practical jests, unskilfully made, which were merely intended as friendly pleasantry. Piroux records the case of Jean-Baptist Villemin, a deaf-mute of twenty-nine years, very imperfectly educated, and of feeble capacity. Placed by the wealth of his family above the necessity of manual labor, and incapable of intellectual labor, he fell into dissolute habits, wandering idly about the fields and frequenting public houses. One night, in a tavern, he met a man named Marchand, who attempted to amuse himself and the company by making signs to the deaf-mute which the latter did not understand. Villemin indicated by a gesture that he desired to be let alone ; but Marchand continued to annoy him, seizing his head, making a bite at his nose, and brandishing round his head a cane, which he then held in the attitude of firing a gun, saying to the company that he wished to invite Villemin to go a hunting. Villemin naturally lost his patience ; unable to understand what was meant by Marchand, or to express his own sentiments, except by actions, he seized the aggressor, flung him on the floor, and gave him a kick on the head. Marchand was only slightly hurt. The company declared, and he admitted, that he was himself to blame ; and he said he harbored no ill-will to Villemin for what had passed. Returning home, a distance of several leagues, on foot, he fell sick and died of a disease of the chest, which his family chose to ascribe

[1] Wh. Cr. Ev. § 375 ; 13 Am. Journ. Ins. 155.

[2] See *supra*, §§ 95–98.

to the blows which he had received from Villemin—which, however, was disproved by the medical witnesses. The deaf-mute was, in the first instance, sentenced to two months' imprisonment; but, on an appeal to the *Cour Royale* of Nancy, in consideration of the unfortunate condition of Villemin, and of the brutal and inconsiderate conduct of Marchand, the term was reduced to six days.[1]

§ 465. "Other cases may easily be supposed in which a deaf person may be led to violent conduct by his inability to hear, and to understand what is meant by others. An impatient man, for instance, requests a deaf-mute to get out of his way, and, not knowing that the latter could not hear his request, attempts to shove him aside, thus provoking a manual retort. A deaf-mute may also erroneously conceive himself wronged in making change, or in price, weight, or measure, and break out into violence. In such cases, we are confident, there are very few who would undertake a prosecution for violence by a deaf-mute, after becoming aware of his peculiar condition. . . . . .

§ 466. "At Cologne, on the 14th and 15th of August, 1829, the royal court of assizes was occupied by an accusation against a deaf and dumb journeyman shoemaker, Johann Schmit, of Kreuznach, who, enraged at being upbraided for the defects of his work, had stabbed his master with a knife. The principal question discussed was whether the early instruction and moral and intellectual state of the deaf-mute made for or against his accountability. The jury found that the unfortunate murderer was not accountable; and he was, therefore, acquitted of the charge, and dismissed free into the street. This (adds the editor of the Hamburg Report), it is to be hoped, was not without that solicitude that might secure a better education to the unfortunate man, then twenty-three years old, and sufficient precautions lest he should become possessed with the idea that he could do such acts with impunity." Illustrations.

"A much more aggravated case than the foregoing was that of Michael Boyer, an uneducated and vagabond deaf-mute, of about twenty-seven or twenty-eight years, who was brought before the court of assizes of Cantal (France), under the triple charge of rape, murder, and robbery, committed on a girl of eleven years, whom he

[1] Piroux's Journal, i. 46, 59.

met in a lonely place on Christmas day, 1843, on her way to the residence of an aunt in a distant village, with whom she was to spend the winter in order to attend school. Boyer was proved to have pursued other females with evident intentions of violence, and had been, some years before, condemned to three years' imprisonment for theft. The evidence, though circumstantial, was conclusive. It is not to our purpose to detail it. We observe, however, that the prisoner, being interrogated through M. Riviere, director of the school for the deaf and dumb at Rodey, denied, energetically, the principal facts imputed to him, and succeeded in making it understood that he maintained that the blood observed on his garments came from a wound in the head, occasioned by a fall while in liquor. What plea was by his counsel set up in defence we are not informed. The jury found him guilty of the triple charge, but admitted extenuating circumstances—a verdict the effect of which was to save the prisoner's life. He was condemned to hard labor for life, and to the *exposition publique* (pillory, or stocks).[1] It should be observed that the only extenuating circumstances that appear in the narrative of this fearful crime were the total deprivation of instruction, and neglected, vagabond state of the criminal. . . . . .

§ 467. "Another deplorable instance of the ungovernable passions of too many uneducated mutes is furnished by the case of Pierre Lafond, who having been repeatedly detected in thefts of the property of his uncle and aunt, by whom he had been adopted and brought up, his aunt was at length provoked to the degree of following and reproaching him in the presence of a young neighbor, of whom Lafond was enamored. Watching an opportunity to execute the vengeance that rankled in his heart, he availed himself of the absence of his uncle to attack his aunt at night, in her bed, with several of the shoe-knives used by him in his trade. Her daughters, coming to her assistance, were also grievously wounded, but, providentially, none of the victims were mortally touched. Taken, a day or two afterwards, wandering in the fields, Lafond alleged, by the aid of an interpreter conversant with his signs, that he committed the act under the influence of a sudden fright and hallucination. However, neither this adroit defence nor his unfor-

[1] Morel's Annales, ii. 166–170.

tunate position could make the jury forget the aggravating circumstances of the case. He was found guilty, and condemned to ten years at hard labor.[1]

"In the several French cases that have been cited (and we might have cited other similar cases from Bebian's, Piroux's, and Morel's Journals), no difficulty appears to have been experienced in relation to the formalities of a trial; the questions that were raised related to the degree of moral accountability of the deaf and dumb. But the few English and Scotch cases we have are mostly of a different character. In these cases the defence set up for deaf-mutes accused of crime has generally turned on legal forms and technicalities. As this paper has already extended to an unexpected length, and as the cases to which we refer can be consulted at large in standard works, we shall restrict ourselves to brief outlines.

§ 468. "In July, 1817,[2] Jean Campbell, an uneducated deaf and dumb woman, the mother of three children by three different fathers, was charged before the court of justiciary, in Edinburgh, with murdering her child by throwing it over the old bridge at Glasgow. Mr. Robert Kinniburgh, an eminent teacher of the deaf and dumb, was called as an expert. He understood, from her signs, that she maintained that, having the child at her back, held up by her cloak, which she held across her breast with her hands, and being partially intoxicated, she had loosened her hold to see to the safety of some money in her bosom, thus allowing the child to fall over the parapet of the bridge, against which she was resting. She indignantly denied having intended to throw it in the river.

"Mr. Kinniburgh, being asked whether he thought she could understand the question, whether she was guilty or not guilty of the crime of which she was accused, answered, that in the way in which he puts the question, asking her by signs whether she threw the child over the bridge or not, he thought she could plead not guilty by signs, and this is the only way in which he could put the question to her; but that he had no idea, abstractly speaking, that

[1] Ibid. i. 56.

[2] Beck gives this date 1807, which is a manifest error, as Mr. Kinniburgh, of the Edinburgh Institution for the Deaf and Dumb, which was first open in 1810, was called in the case, and referred to it in his report for 1815.

she knew what a trial was, but she knew she was brought into court about her child.

"John Wood, Esq., auditor of excise (who is deaf and partially dumb), gave in a written statement upon oath, mentioning that he had visited the prisoner in prison, and was of opinion that she was altogether incapable of pleading guilty or not guilty; that she stated the circumstances by signs, in the same manner she had done to the court when questioned before the court by Mr. Kinniburgh, and seemed to be sensible that punishment would follow the commission of a crime.

"The court were unanimously of opinion that this novel and important question, of which no precedent appeared in the law of this country [Scotland], deserves great consideration, and every information that the counsel on each side could procure and furnish.

"At a subsequent period the judges delivered their opinion as follows:—

"Lord Hermand was of opinion that the panel (prisoner) was not a fit object of trial. She was deaf and dumb from her infancy; had had no instruction whatever; was unable to give information to her counsel, to communicate the names of her exculpatory witnesses, if she had any, and was unable to plead to the indictment in any way whatever, except by certain signs which he considered no pleading whatever.

"The four other judges, however, overruled this opinion, referring especially to a case (already mentioned in a former part of this paper) that had occurred in England, in 1773, in which one Jones, who had stolen five guineas, appearing to be deaf and dumb, and being found by the jury impanelled on that point to be mute 'from the visitation of God,' was arraigned by the means of a woman accustomed to converse with him by signs, found guilty and transported. And it was also observed that it might be for the prisoner's own good to have a trial; for, if the jury found that her declaration, that she did not intend to throw her child in the river, was true, she would be acquitted and set free; whereas, if not found capable of being tried for a crime, she must be confined for life. The woman Campbell was accordingly placed at the bar, and, when the question was put, guilty or not? 'her counsel, Mr. McNeil, rose, and stated that he could not allow his client to plead to the indictment, until it was explained to her that she was at liberty to

plead guilty or not. Upon it being found that this could not be done, the case was dropped, and she was dismissed from the bar *simpliciter*. Thus, though it is established that a deaf-mute is *doli capax*, no means have yet been discovered of bringing him to trial.'

"Certainly the system of laws of Scotland must be defective, under which important leading cases are decided, not on broad, general principles, but on mere formalities and technicalities."[1]

The manner in which deaf and dumb persons are to be arraigned has been noticed in another work.[2]

2. *Blind.*

§ 469. *Blindness*[3] can only come in question here when it is congenital or has originated in early infancy, for then only can it exercise decisive influence on the mental and moral development. In general, however, blindness is no reason to suspend the personal responsibility of an agent; the defects of the mental and moral nature consequent upon it are not diseases; and the bearing which they have upon the degree of culpability ascribable to an act committed in violation of law must be referred to the discretion of the court, as guided by the circumstances of each case.[4]

Blindness does not affect responsibility

3. *Epileptics.*[5]

§ 470. Epileptics, from their nervous susceptibility and their tendency to mental alienation, should be regarded with peculiar tenderness by those to whom is committed the administration of public justice. Nor should the idea of a recent recovery ever exclude one who has been so afflicted from that protection which would secure at least a patient investigation of the question of moral responsibility. Recent investigations, conducted by men of eminent sagacity and great opportunities

Peculiar tendency of epilepsy to insanity.

[1] Essay by Dr. Peet; see *supra*, § 96.

[2] Wh. Cr. L. § 532.

[3] Shürmayer, Gericht. Med. 563; and see L. Krahmer, Handbuch de Gericht. Med. Halle, C. A. Schwetschke, 1851, § 122; *supra*, § 95.

[4] Compare Friedreich, 676, where the learning on this subject is collected.

[5] See L. Krahmer, Handbuch Gericht. Med. Halle, C. A. Schwetschke, 1851, § 122; see J. Briand, Méd. Lég. p. 568, Paris, 1852; M. Orfila, Méd. Lég. tome i. p. 332, Paris, 1848; M. Falret, Cliniques de Médecine Mentale, p. 521, Paris, 1854.

of observation, have led to the conclusion that epilepsy produces not only general mental prostration, but anomalies in the entire moral and intellectual system. And although the malady sometimes coexists with great intelligence, yet the patient retains, not only during the attack, but for an indefinite period afterwards, but an imperfect use of his faculties.[1]

Nature of epilepsy.

§ 471. *Epilepsy proper* consists in periodical attacks of insensibility, accompanied with involuntary, convulsive, and more or less violent motions of the limbs. That persons committing a violation of law, while in this condition, are entitled to the full benefit of all the considerations which affect the responsibility of the agent, needs no argument after what has been already said on the subject of unsoundness of mind. The case, however, admits of more difficulty when the question is whether, in the interval between the attacks, a state of mind does or does not exist calculated to destroy or diminish responsibility.[2]

Distinction between the several classes.

§ 472. It will be peculiarly necessary, here, to make a division between the several classes of epileptic diseases. The infirmity is well known to appear in very different degrees of intensity under different circumstances, and, as it arises from different physical causes, it may be considered as exerting different retroactive influences on the mind and the body. It may affect the intellectual faculties in a very subordinate degree, as the cases of men like Cæsar, Napoleon, and Mohammed sufficiently prove. The doctrine therefore results, that, *in general epilepsy, the usual presumption of responsibility applies to acts committed in the intervals between one attack and another.*[3]

[1] Boileau de Castlenau: De l'épilepsie dans ses rapports avec l'aliénation mentale, considérés au point de vue médico-judiciare. Annales d'Hygiène publ. et de Médecine Lég., Avril, 1842, No. 94. Erhardt-Ueber Zurechnungsfähigkeit der Epileptischen.

[2] Schürmayer, Gericht. Med. § 565. See articles in the Am. Journ. of Ins. for 1872, pp. 341, 723, and vol. 30, p. 1; a résumé of cases in 13 Bulletin Med. Leg. Soc., N. Y., p. 205; an article in 19 Journ. Ment. Sci. p. 19; and the Iconographie photographique de la Salpêtrière, giving photographs of cases of hystero-epilepsy, somnambulism, partial epilepsy, etc., Bourneville and Renaud, Paris, 1878.

[3] According to Briand, moral liberty is entirely suspended during the attacks. An epileptic, he argues, who commits a homicide during the height of his disease, has had no criminal intention, and therefore cannot incur responsibility. See a report of the case of Isabella Jenisch, in 31 Am. Journ. of Ins. p. 430.

§ 473. *Obscure epilepsy*, as to the existence of which there can be no doubt, since the explorations of Morel,[1] may be confined in its symptoms to dimly periodic epileptoid conditions, to twitching of particular muscles, to occasional fixity of the eye, temporary stiffening or stoppage of the organs of speech, and to parenthetical loss of memory, *vertigo epileptica*. It is maintained still further by this acute observer—and this with the concurrence of Liman, an author whose conservative tendencies in this respect we have already noticed—that these periodic attacks may exhibit themselves exclusively in mental disturbance, in extraordinary excitability, in impulses to homicide and suicide, in sudden losses of memory, ultimately, though perhaps not till a long progress, culminating in epilepsy proper. These cases, however, are rare, and credence should be suspended until the full development of the disease is reached.

Existence of obscure epilepsy.

§ 474. In particular cases the responsibility of the agent may be destroyed, where real symptoms of derangement present themselves, and where it is possible or probable that the offence was brought on by such abnormal state of the faculties. The higher grades of the disease, where it is of long standing, and where the attacks recur at brief intervals, cast a doubt upon the psychical requirements of responsibility, even where nothing is observed which expressly characterizes an aberration of the mental faculties. The stage which immediately precedes an attack, the premonitory symptoms of heaviness in the head, dizziness, loss of consciousness, etc., as well as that which immediately succeeds an attack, and consists in a manifest disorder of the bodily and mental functions of the subject, is to be treated as connected with the immediate attack.[2]

Different stages of the disease.

§ 475. The moral requirements of responsibility are satisfied when the disease is not of great intensity, and where the intervals show no trace of an alteration of the intellectual functions produced by it, and the incitement to the act complained of is found not in the obtuseness or ebullition generally peculiar to such patient, but in a selfish motive, and

Epilepsy not affecting responsibility.

[1] Traité des maladies mentales, Paris, 1866, p. 480.

[2] Schürmayer, Gericht. Med. § 567.

where the execution of the act betrays forethought, reflection, and wilfulness.

Rule as to intermediate stage.

§ 476. Persons truly epileptic are easily excited to anger and revenge on the slightest provocation, in the intervals between their attacks. Although these attacks do not always attain to such a degree as to deserve the name of mental derangement, yet it should never be forgotten that there is always a morbid predisposition to insane ebullitions, and in general a morbid irritability, which must impair, if not destroy, the moral responsibility of actions growing out of them. And, even where a sentence of punishment is pronounced, it must not be overlooked that its execution may possibly exercise a most deleterious influence on the health of the individual, by aggravating the disease, and perhaps in forcing it into real insanity. *It is not advisable, therefore, to execute a sentence of punishment upon an epileptic, without having submitted the case to the examination of a duly authorized forensic physician.*[1]

Tests laid down by Clarus.

§ 477. Different views, however, have existed on this point. Platner[2] denies the responsibility of *any* epileptic whatever. Clarus[3] takes a view more in harmony with those we have just advanced, maintaining the following propositions:—

1. All actions and omissions which take place during the paroxysm of epilepsy are invalid and irresponsible.

2. When the attack of habitual epilepsy is succeeded by, or alternates with, a state of mania or imbecility, *all* responsibility is at an end, even where this latter state is but transitory, because no human insight or experience can decide with certainty whether the patient, at that particular instant, was in an entirely sane condition. On the other hand, civil acts done under such circumstances, if intelligent, may be valid.

3. Swooning, heaviness of the head, weakness of memory, fever, enhanced irritability, etc., which precede or follow the attack, de-

[1] Ibid. § 568. For a case of hereditary type of epilepsy, see the report of Standerman's case, 32 Am. Journ. Ins. p. 459. See also report of a case of lunacy in 24 Journ. Ment. Sci. 90.

[2] Quæst. Med. For., p. vi.

[3] Beitrage zur Erkenntniss und Beurtheilung zweifelhaften Seelenzustaende, Leipsic, 1828, p. 96.

stroy as well the responsibility as the validity of acts committed during their continuance.

4. Where it is capable of proof, that the epileptics, in the intervals of their attacks, betray symptoms of malice and obtuseness, justice demands that their faults should be regarded as effects of the disease, and that they should be held irresponsible for acts committed in an ebullition of rage or other passion, while such condition should operate in mitigation where the crime presupposes forecast and reflection.

5. Where the signs of an altered state of mind are wanting both before and after the attacks, the possibility still remains that these signs continue undetected because of their minuteness, and that patients of this description are less able to resist sudden impulses than persons in good health; which would suggest a mitigation of punishment for actions of violent passion, but not for those involving reflection.

6. All these propositions apply only to idiopathic and habitual epilepsy; not to isolated attacks which ensue upon other diseases, and where no trace remains after their cessation.

7. The diseases connected with epileptic symptoms, particularly hysterical spasms, accompanied with insensibility, and diseases of the generic character of St. Vitus's dance, are subject to the rules above laid down, under the restrictions mentioned in the last head, because the presumption of a *latent* propensity to ebullitions of passion is not, in such cases, vouched by experience.[1]

§ 478. The difficulties, in cases of pronounced epilepsy, confine themselves to the question of moral agency during the intervals between the attacks. While the attack lasts, the epileptic cannot be viewed as a free agent; and the inquiries which the forensic psychologist has to answer concern, therefore, the intermediate conditions of the patient. Is he, in such periods, responsible for obligations entered into, or offences committed? Of course, in replying to this, we must put aside those cases where mental disease, as it frequently does in the

Different conditions of intermediate stages

[1] Compare, on the responsibility of epileptics, Friedreich, Handbuch der gerichtlichen Psychologie, p. 637, and Henke, Abhandlungen aus dem Gebiete der gerichtlichen Medizin, vol. iv. p. 1. The Am. Journal of Insanity, vol. xii. p. 122, gives a valuable translation from Delasiaure on Epilepsy. See also an article on Nocturnal Epilepsy, 24 Journ. Ment. Sci. 568.

type of dementia, positively exhibits itself in the patient in such intervals. This condition as such destroys his responsibility. We have to meet what may be called an intermediate condition—a condition, it may be, of abnormal excitability, of melancholy in its less settled phases, of intellectual debility more or less marked. Or we are presented with cases in which the epileptic convulsions are but rare, slight, and tremulous; and in which the preponderating and far more conspicuous symptoms are hypochondria, irritability, dislike and even animosity to associates and relatives, suspiciousness, or sense of injury from others resulting in overt acts of defence or retaliation. Or a still more advanced phase of disease may exhibit itself in a sort of temporary dreaminess, producing incoherent and insensible acts, of which there is subsequently but a confused recollection.[1] In itself this loss of memory is, as has been seen, an important proof of suspension of responsibility. But the difficulty of proving such loss of memory is much complicated by the well-known tendency of epileptics to simulate symptoms, or to exaggerate those which really exist.

§ 479. Liman[2] suggests, as to this point, that the patient should be examined as to loss of memory on other topics than that which is the subject of judicial investigation. He also argues that such intermediate loss of consciousness is not to be assumed when the litigated transaction required for its consummation complicated intellectual activity, and was elaborated through weeks or months, and when for collateral points the patient's memory is shown to have been good. Certainly any less stringent test would work great injury, both to epileptics, by their business disfranchisement, and to the community, which would be obliged to thus recognize them as a privileged class of outlaws emancipated from the restraints of the penal law.

Dr. Maudsley on moral effects of epilepsy.

§ 480. The moral effects of epilepsy have been nowhere more emphatically recorded than by Dr. Maudsley, in his remarkable lectures, published in 1870, under the title of "Body and Mind." He reminds us that a single epileptic fit has been known to result in an entire transformation of character in the patient, causing one who had formerly been

[1] These states are delineated by Morel, in his work already referred to, and also by Griesinger, Archiv, i. 319.

[2] Liman's Casper, 1871, p. 442.

gentle, amiable, and tractable, to appear rude, vicious, and perverse. Among confirmed epileptics, the periods preceding convulsions are marked by moodiness, irritability, and sometimes by a sullen fierceness; while in the intervals the patient may be amiable and tractable. Sometimes epileptic neurosis may exist for a long period in a masked and suppressed state, exhibited, not by convulsions, but by moral or mental perversion.[1]

Murder during epileptic attack. Lawton's case.

§ 481. "We have had opportunities," says Mr. Browne (1871), in his work on the Medical Jurisprudence of Insanity,[2] "of inquiring into the case of George Lawton, who was an inmate of the West Riding Lunatic Asylum up to the 24th of March last, when he was committed by the coroner to take his trial for the wilful murder of attendant Lomas, at the assizes then being held at Leeds. Upon Monday, the 27th instant, George Lawton was placed at the dock to take his trial. Mr. Baron Cleasby was the presiding judge. Upon the evidence of Dr. Crichton Browne, Medical Director of the West Riding Asylum, being taken, the jury were asked to return a verdict as to the capability of the prisoner to plead, and returned a verdict that he was incapable. The circumstances of this case, as gathered from the depositions, are these: Lawton was admitted into the asylum in 1863, and suffered from epileptic fits of a severe character. During his residence in the institution he several times attempted to commit suicide, and, shortly before the murder of the attendant, he had struck a fellow-patient in the face with a dinner-knife. The deceased (Lomas) was principal attendant in No. 14 ward, in which Lawton had been placed. Upon the afternoon of Friday, the 24th instant, Lomas remained in the ward in charge of Lawton and three other patients, while the other attendants and their charges went out for a walk. About three o'clock an attendant in the airing court heard a cry, and, looking up at the second story, saw Lawton striking violently at something on the ground, with what appeared to be a stick. He hastened to the ward, and met a patient on the step, who said, 'He's killed, and he's killed,' and, upon entering

[1] As to the effect of paralysis, see Lond. Med. Rec. N. S., No. 43, p. 11; and a report of the Affair Chorinsky, 19 Journ. Ment. Sci. 308. See also a paper by Dr. Meredith Clymer, Proceedings of N. Y. Med. Leg. Soc., 1872, pp. 444–467.

[2] Page 229.

the padded-room, he found Lomas lying in a corner, with his skull fractured in many places. The room was spattered with brains and blood. Lawton was in the day-room of the ward when he was first seen. He had a poker in his hand, and he said to the attendant, as he was about to enter, 'I'll serve you the same if you come in here.' That is the whole story. The attendant died ten minutes after the medical assistant was in attendance. The notes of the post-mortem examination upon the body of Lomas indicate that he must have been struck repeatedly with the utmost violence. The condition of the walls and roof of the room in which the murder was committed points to the same conclusion. During the whole of the Friday night succeeding the murder, Lawton was restless and maniacal. He sprang out of bed whenever the attendants, who were in charge of him, turned their heads. The same excitement and restlessness continued during the forenoon of Saturday. Towards evening he became calmer, and could talk rationally concerning the crime he had committed. We had a long conversation with the patient upon the afternoon of Sunday, and came to the conclusion that at the time we observed him he was to all intents and purposes a sane man. He certainly was weak minded. But he described the whole circumstances of the murder with intelligent accuracy. He maintained that he had no ill-will to the deceased, that he did not know why he had done it, and that the deceased had always been very kind to him. When pressed, he said that he had seen ships and railways on the ceiling of his room before going to sleep; but we did not come to the conclusion that these were insane illusions. He confessed to having done many things to get rid of his fits; to have held his head under the cold-water tap, to have gone without butter or beer for months past, to have drunk his urine, and all with a view to cure himself of epileptic seizures. He described his condition during the day previous to the murder. He had known that a fit was coming on, and had deposited his money and tobacco with the store-keeper, lest they should be taken from him by some other patient during the unconsciousness which was incident to the attack. He had felt a stiffening of the muscles of his limbs, and had, according to his own account, had a severe seizure in the day-room upon that day.

"His memory with regard to the occurrences of the morning of

the Friday was not perfect. He sometimes said he remembered being spoken to while at dinner by the medical superintendent, and at other times he did not remember it. He said that he had refrained from taking meat that day, because he thought it would do his soul good. He said that he himself was a Methodist, but that he did feel better upon the Saturday morning for the abstinence. With regard to the crime itself he knew it was wrong. He knew that persons who were in their right mind, and who committed murder, were hanged, but he seemed to regard himself as exempted from punishment because he had fits, and because he sometimes did not know what he was doing. He said he knew swearing was wrong; he though it more heinous than murder. He imagined that if Lomas was good, he must have gone to heaven, and he said he hoped he had not done him any harm. He repeatedly asserted that he liked Lomas, the murdered man, and that he did not know why he had done what he had done. He spoke of having on a former occasion tried to jump through a glass door, and having, before he was admitted to the asylum, laid himself down on the rails that he might be run over. He seemed to connect these acts, or the conditions existing when they were done, with the murder of his attendant, or the conditions which were present at the time of the commission of the crime. From the whole interview—from what he said, from his manner of saying it, from the muscular tremors which every now and then were observable in his limbs—we came to the conclusion that the crime for which he was to be tried was due to a simple suggestion, arising during the stupid condition which succeeds an attack of epilepsy, and that the temporary imbecility was succeeded by epileptic mania, which was in its turn followed by a gradual restoration to the normal condition of health. In our presence the patient showed that he was able to read, that he understood the simple rules of arithmetic, and that he was cognizant of the ordinary doctrines of religion in much the same way as other people of the same class and with the same amount of education are. There was considerable mental weakness, but it seemed to us to be of such a kind as would not have incapacitated the patient in any way, civil or criminal, had he been free from epilepsy."

II. MENTAL UNSOUNDNESS AS CONNECTED WITH SLEEP.[1]

§ 482. Under this general head may be grouped *somnolentia*, or sleep-drunkenness (Schlaftrunkenheit), *somnambulism*, and *nightmare*, the two last of which may be considered together. In the forensic treatment of such maladies, it is important for the court to consider whether the person subject to such a disorder was properly aware of it, and of the possible consequences, and able to take the precautions by which those consequences might have been averted.

Division of this subject

§ 483. Sleep would seem to be only a peculiar form of cerebral life, and not a negation of the life of the brain producing consequent fatigue, exhaustion, or weakness; it is not to be supposed that the state of sleep issues out of the intellect itself, but the intellect is diverted by the peculiar change of the action of the brain into that state of existence which we call sleep. But the intellect does not sleep; nor can it ever be said that its activity diminishes during sleep; we merely cease to perceive its activity. On the other hand, we cannot doubt that the activity which involves sleep may also be morbid, abnormal, and connected with cramps or convulsive symptoms. Sleep is interrupted by whatever terminates the peculiar condition of the brain upon which sleep depends; by the natural expiration of this peculiar state of the brain; by vivid and sudden impressions on the senses, and by disagreeable sensations. Now, in a certain morbid condition of the brain this awaking is not complete, and does not restore the waking state with a full and correct perception of surrounding things; but an intermediate state between sleeping and waking is produced, which resembles intoxication, and is called the *intoxication of sleep* (*Schlaftrunkenheit*). This state admits of action which is directed by the phantoms of the dream; talking in sleep being very nearly allied to waking, and dreams themselves being midway between sleep and waking, for in the depths of sleep we no longer become conscious of dreams.

General effect of sleep on the senses.

Nightmare and somnabulism, on the other hand, are, as will be seen, distinct abnormal conditions of continuous sleep, and, under

[1] See Méd. Lég. M. Orfila, tome i. p. 456, Paris, 1848; Méd. Lég. M. Briand, p. 563, Paris, 1852; Renaudin sur l'Alienation Mentale, chap. 6th, p. 255, Paris, 1854; Leçons Cliniques de M. Falret, Leçon 4th, p. 117, Paris, 1854.

certain external circumstances, may lead to acts of violence. In examining such cases it is important to inquire into the existence of abnormal physical conditions, such as plethora, predisposition to congestions in the head or breast, actual congestions, diseases of the heart, abnormal plethora, suppressed hæmorrhoids, eruptions of the skin, or other habitual secretions which have been driven in, nervous affections of various kinds, impure air in the bedroom, a hearty meal, or indulgence in ardent spirits immediately or shortly before going to sleep. *Somnambulism* is not a mere intensified dream, but *in foro medico* must be treated as a morbid independent state, and, in a legal point of view, every act shown to have been committed under its influence is disconnected with voluntary moral agency.[1]

1. *Somnolentia, or sleep-drunkenness.*

§ 484. Sleep-drunkenness may be defined to be the lapping over of a profound sleep on the domains of apparent wakefulness producing an involuntary intoxication on the part of the patient, which destroys at the time his moral agency. Under the name of *somnolentia*, which was given to it by Ploucquet and subsequent French writers, and of *Schlaftrunkenheit*, which it was styled by the German school, it became the subject of general discussion at the beginning of the present century. The first case in which the symptoms were unmistakably reported was that of Buchner.[2] A sentry, who had fallen asleep during his watch, being suddenly aroused by the officer in command, fell upon the latter with his drawn sword, with an attack so furious that the most serious consequences were only averted by the interposition of bystanders. The result of the medical examination was, that the act was involuntary and irresponsible, being the result of a violent confusion of mind consequent upon the sudden involuntary waking from a profound sleep.

Definition.

§ 485. Shortly afterwards occurred the case of a day-laborer, who killed his wife with a wagon-tire, the blow being struck immediately upon his starting up from a deep sleep, from which he was forcibly awakened. In this case there was evidence *aliunde* that the defendant was

Case of irresponsibility produced by sleep-drunkenness.

[1] Schürmayer, Gericht. Med. § 561.

[2] See Henke's Zeitschr. 10 B. p. 39.

seized when waking with a delusion that a "woman in white" had snatched his wife from his side and was carrying her away, and that his agony of mind was so great that his whole body was wet with perspiration. There was no doubt of the defendant's irresponsibility.[1] In this country, the case properly would fall under the head of excusable homicide by misadventure.[2] In practical result, these cases vary little from an early English case, already noticed, in which, though there was no psychological defence made, there was proof of the same delusions as to danger heightened by the same disturbances of mind as are produced by a sudden waking up from a deep sleep. The defendant, being in bed and asleep in his house, his maid-servant, who had hired the deceased to help her do her work, as she was going to let her out about midnight, thought she heard thieves breaking open the door, upon which she ran up stairs to the defendant, her master, and informed him thereof. Suddenly aroused, he sprang from his bed, and, running down stairs with his sword drawn, the deceased hid herself in the buttery, lest she should be discovered. The defendant's wife, observing some person there, and not knowing her, but conceiving she was a thief, cried out, "Here are they who would undo us;" and the defendant, in the paroxysm of the moment, dashing into the buttery, thrust his sword at the deceased and killed her.[3] The defendant was acquitted under the express instructions of the court, and the case has stood the test of the common law courts for over two hundred years, during which it has never been questioned. It is important to observe, however, that, if it differs from the two cases already noticed under this head, in the increased *naturalness* of the delusion under which the defendant was laboring, it differs from them in the comparatively longer interval in which his perceptive faculties had the opportunity to arrange themselves. Let it be supposed that it was the *wife*, and not the *husband*, who had slain the deceased. Under the circumstances, the result would hardly have been different, and yet in this case the distinction between her responsibility and that of the laborer who killed his wife on the waking spasm is simply in the *degree* of probability of delusions which in both cases were unfounded. If in the one case this improbability was more glaring, let it be recollected that there was

[1] Wildberg's Jahrbuch, 2 Bd. p. 32.
[2] See Wharton on Hom. 210.
[3] Levet's case, Cro. Car. 538; 1 Hale, 42, 474.

much less time afforded to the patient to compose himself to a reasoning state of mind.

§ 486. Much more recently, a case occurred which led to the whole question being re-examined and discussed. A young man, named A. F., about twenty years of age, was living with his parents in great apparent harmony, his father and himself being alike distinguished for their extravagant devotion to hunting. In consequence of the danger of nocturnal attacks, they were in the habit of taking their arms with them into their chamber. On the afternoon of September 1st, 1839, the father and son having just returned from hunting, their danger became the subject of particular conversation. The next day the hunting was repeated, and on their return, after taking supper with the usual appearance of harmony, the family retired at about ten o'clock, the father and mother occupying one apartment, and the son the next, both father and son taking their loaded arms with them to bed. At one o'clock, the father got up to go into the entry, and on his return jarred against the door opening into the entry, upon which the son instantly sprang up, and, discharging his gun at the father, gave the latter a fatal wound in the breast, crying at the same time, "Dog, what do you want here?" The father fell immediately to the ground, and the son, then first recognizing him, sank on the floor crying, "O Jesus! it is my father." The evidence was, that the whole family were subject to great restlessness in their sleep, and that the defendant in particular was affected by a tendency to be easily distressed by dreams, which lasted for about five minutes on waking, before their effect was entirely dissipated. His own version of the affair was, "I must have fired the gun in my sleep; it was moonshine, and we were accustomed to talk and walk in our sleep. I recollect hearing something jar; I jumped up, seized my gun, and shot where I heard the noise. I recollect seeing nothing, nor am I conscious of having spoken. The night was so bright that everything could have been seen. I must have been under the delusion that thieves had broken in." The concurrent opinions of the medical experts examined on the trial were, that the act was committed in a state of *somnolentia* or *sleep-drunkenness*, and that it was not that of a free and responsible agent.[1]

[1] Henke's Zeitschrift, 1853, vol. lxv. pp. 190–1; and see also a case of much greater doubt in Klein's Annalen der Gesetzgebung, etc., viii. B., Berlin, 1798; and Möller's gerichtliche Arzneiwissenschaft, vol. i. 302.

§ 487. It is important to distinguish somnolentia, or sleep-drunkenness, which is a state that to a greater or less extent is incidental to every individual, from somnambulism, which is an abnormal condition incident to a very few. The experience of every-day life demonstrates how much the former enters into almost every relation. Children, particularly, sometimes struggle convulsively in the effort to wake up, which often is continued for several minutes. The very exclamations, "Wake up"—"Come to"—which are so common in addressing persons in the waking condition, are scarcely necessary to bring to the mind many recollections of cases where the waking struggle has been peculiarly protracted. Of course there are constitutions where this struggle is peculiarly distressing, just as there are constitutions in which the tendency to sleeplessness is equally marked. Dr. Krügelstein tells us of a merchant of distinction who had an irrepressible tendency to sleep in the afternoons, and yet who, whenever he was wakened up, was for a few moments overcome with a paroxysm, over which he had no control. Dr. Meister himself[1] relates the following phenomenon: "I was obliged to take a journey of eight miles on a very hot summer's day, my seat being with my back to the horses, and the sun directly in my face. On reaching the place of destination, and being very weary and with a slight headache, I laid myself down, with my clothes on, on a couch. I fell at once asleep, my head having slipped under the back of the settee. My sleep was deep, and, as far as I can recollect, without dreams. When it became dark, the lady of the house came with a light into the room. I suddenly awoke, but, for the first time in my life, without collecting myself. I was seized with a sudden agony of mind, and, picturing the object which was entering the room as a spectre, I sprang up and seized a stool, which, in my terror, I would have thrown at the supposed shade. Fortunately, I was recalled to consciousness by the firmness and tact of the lady herself, who, with the greatest presence of mind, succeeded in composing my attention until I was entirely awakened."

Somnolentia distinct from somnambulism.

§ 488. The existence of this intermediate state between sleeping and waking, and of the "drunkenness" by which it is sometimes

[1] Henke's Zeitschrift, vol. lxv. 456. See Krafft-Ebing, Transitorische Irresein, 1868.

accompanied, is recognized by even the older elementary writers. Thus Wendler[1] says: "Discerni autem possit expergefactio naturalis a præternaturali. Etenim somno sensim reficitur sensibilitas animi, quæ, cum in eum evehitur gradum, ut solemnibus pistoque non fortioribus excitamentis ad cogitandum excitetur, naturalis expergefactio est; contra ubi facultate illa parum aucta, insolita incitamentorum vis animum cogit ad statum vigiliæ, præternaturalem hanc dicimus expergefactionem." Necessary tests to determine responsibility.

The following tests it is important to apply in order to determine the question of responsibility:—

a. A general tendency to deep and heavy sleep must be shown, out of which the patient could only be awakened by violent and convulsive effort.

b. Before falling asleep, circumstances must be shown producing disquiet which sleep itself does not entirely compose.

c. The act under examination must have occurred at the time when the defendant was usually accustomed to have been asleep.

d. The cause of the sudden awakening must be shown. It is true that this cannot always happen, as sometimes the start may have come from a violent dream.

e. The act must bear throughout the character of unconsciousness.

f. The actor himself, when he awakes, is generally amazed at his own deed, and it seems to him almost incredible. Generally speaking, he does not seek to evade responsibility, though there are some unfortunate cases in which the wretchedness of the sudden discovery overcomes the party himself, who seeks to shelter himself from the consequences of a crime of which he was technically, though not morally, guilty.

§ 489. A very intelligent observer, Dr. Krügelstein, has given us a critical and extended observation of those cases in which crimes have been committed in the supposed somnolential state, in which he draws the inferences that this species of mania occurs chiefly, if not entirely, with persons who are sound sleepers, and are suddenly startled, by some Observations of Dr. Krügelstein.

[1] Dissertatio de Somno. Lipsiæ, 1805, p. 23. Krafft-Ebing gives a similar case in his Trans. Irresein, 1868, p. 8.

violent exterior cause, from a sleep which, from indigestion or other causes, has been already disturbed and excited by dreams of peculiar vivacity. Such cases are universally marked with a want of consciousness in the actor, and followed when he awakes by entire astonishment and then violent remorse.[1]

§ 490. Dr. Taylor[2] gives us the following case on the same point:

Case given by Dr. Taylor.

A peddler, who was in the habit of walking about the country armed with a sword-stick, was awakened one evening, while lying asleep on the high-road, by a man who was accidentally passing seizing him and shaking him by the shoulders. The peddler suddenly awoke, drew his sword and stabbed the man, who afterwards died. He was tried for manslaughter. His irresponsibility was strongly urged by his counsel, on the ground that he could not have been conscious of an act perpetrated in a half-waking state. This was strengthened by the opinion of the medical witness. The prisoner was, however, found guilty. Under such circumstances it was not unlikely that an idea had arisen in the prisoner's mind that he had been attacked by robbers, and therefore stabbed the man in self-defence.[3]

Dr. Hartshorne, in a note, tells us that a somewhat similar case occurred in Philadelphia, a few years back, in which a man was shot with a pistol by an acquaintance whom he had suddenly aroused from sleep, late at night, in an open market-house. The plea was, that the deceased was mistaken for a robber when the pistol was fired; but the jury found a verdict of manslaughter.

§ 491. Two persons, in a case cited by Mr. Best, who had been hunting during the day, slept together at night. One of them was renewing the chase in a dream, and imagining himself present at the death of the stag, cried out "I'll kill him! I'll kill him!" The other, awakened by the noise, got out of bed, and by the light of the moon beheld the sleeper give several deadly stabs with a knife, in that part of the bed which his companion had just quitted. Suppose a blow given in this way had proved fatal, and the two men had been shown to have quarrelled previously to retiring to rest! But a defence of

Somnolentia as a defence may be unduly strained.

[1] Krügelstein, Ueber die in Zustande der Schlaftrunkenheit verübten Gewaltthätigkeiten in gerichtsarztlicher Beziehung.

[2] Med. Jur. 599, 600.

[3] R. *v.* Milligan. Lincoln Autumn Assizes, 1836.

this kind, as is well remarked by Dr. Taylor, may be unduly strained. Thus, where there is an enmity, with a motive for the act of homicide, the murderer while sleeping in the same room may select the night for an assault, and perpetrate the act in darkness in order the more effectually to screen himself. In the case of Reg. *v.* Jackson,[1] it was urged in defence that the prisoner, who slept in the same room with the prosecutor, had stabbed him in the throat, owing to some sudden impulse during sleep; and the case of Milligan, above given, was quoted by the learned counsel in support of the view that the prisoner was irresponsible for the act. It was proved, however, that the prisoner had shown malicious feelings against the prosecutor, and that she wished him dead. The knife with which the wound had been inflicted bore the appearance of having been recently sharpened, and the prisoner must have reached over her daughter (the prosecutor's wife), who was sleeping in the same bed with him, in order to produce the wound. These facts are quite adverse to the supposition of the crime having been perpetrated under an impulse from sleep, and the prisoner was convicted. In another case, Reg. *v.* French,[2] it was proved that the prisoner while sleeping in the same room had killed the deceased, who was a stranger to him, under some delusion. There was, however, clear evidence that the prisoner was insane, and on this ground he was acquitted under the direction of the judge.[3] In a subsequent case in Ireland, where the same defence could with much justice have been presented, the defendant, though under circumstances throwing much doubt on the verdict, was convicted.[4]

2. *Somnambulism.*

§ 492. Somnambulism, according to the usual acceptation, involves (1) *continuousness*, not being merely a transition momentary state between sleeping and waking; (2) a sort of supersensual or ecstatic consciousness, which enables the patient to find his way with his eyes closed, or with his vision so abnormally excited as to fail to present to him anything more than a certain path, or certain objects on which his attention

Conditions of somnambulism.

[1] Liverpool Autumn Ass. 1847.

[2] Dorset Autumn Ass. 1846.

[3] Taylor's Med. Jurisprudence, pp. 599, 600.

[4] See 22 Am. Jour. of Ins. 25.

is absorbed. Perhaps the latter condition may be more correctly defined as that of a state of dreamy abstraction, in which the objects of a dream are exclusively observed and pursued. In a limited degree this is frequently observable in children, who at night, especially when the room is lighted by the moon, will rise from their bed and wander into their mother's room, apparently in a dreamy state, incapable of giving clear answers, and without subsequent waking recollection of having made such a move. But as to adults, it is to be observed that the condition is easily simulated, and that as the cases of adult somnambulism reported in recent years are very rare, and are sustained by meagre proof, we may indulge in a reasonable doubt whether most of the earlier cases are not to be solved by the hypothesis of simulation, or of mythical exaggeration. Certainly, when an act is intelligently done by an adult, and for an intelligible purpose, the defence of somnambulism is one of the wildest that can be offered.

Somnambulism a species of deelirium.

§ 493. "Dreaming," says Dr. Rush, "is a transient paroxysm of delirium. Somnambulism is nothing but a higher grade of the same disease. It is a transient paroxysm of madness. Like madness, it is accompanied with muscular action, with incoherent or coherent conduct, and with that complete oblivion of both which takes place in the worst grade of madness. Coherence of conduct discovers itself in persons who are affected with it undertaking or resuming certain habitual exercises or employments. Thus we read of the scholar resuming his studies, the poet his pen, and the artisan his labors, while under its influence, with their usual industry, taste, and correctness. It extended still further in the late Dr. Blacklock, of Edinburgh, who rose from his bed, to which he had retired at an early hour, came into the room where his family were assembled, conversed with them, and afterwards entertained them with a pleasant song, without any of them suspecting he was asleep, and without his retaining after he awoke the least recollection of what he had done."[1]

[1] Rush on the Mind, pp. 302, 303. See E. L. Heim, vermischte med. Schriften, herausg. von A. Paetsch. Leipsic, 1836, § 336. L. Krahmer, Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851, § 115. Siebold, Lehrbuch der Gericht. Med. Berlin, 1847, § 196.

§ 494. A German psychologist[1] gives us, in great minuteness, a narrative of a young woman, a somnambulist, who, when twenty-three years old, having been previously in good health, and regular in her menstruation, was seized with epilepsy in consequence of a fright produced by an attack of robbers. She soon became the victim of somnambulism, which manifested itself in all its ordinary incidents, such as deep sleep, want of memory and firmness in her movements when under its influence. While in the somnambulic condition, she had the habit of concealing articles of various kinds, the result of which was that she was charged with theft. Under the advice of Dr. Dornblüth she was finally acquitted, and under his care was gradually restored to health.

Instances of somnambulism producing unconsciousness and irresponsibility.

§ 495. Dr. Upham gives us the following American illustration: "A farmer in one of the counties of Massachusetts, according to the account of the matter which was published at the time, had employed himself for some weeks in the winter thrashing his grain. One night, as he was about closing his labors, he ascended a ladder to the top of the great beams in the barn, where the rye which he was thrashing was deposited, to ascertain what number of bundles remained unthrashed, which he determined to finish the next day. The ensuing night, about two o'clock, he was heard by one of the family to arise and go out. He repaired to his barn, being sound asleep and unconscious of what he was doing, set open his barn doors, ascended the great beams of the barn where his rye was deposited, threw down a flooring, and commenced thrashing it. When he had completed it, he raked off the straw and shoved the rye to one side of the floor, and again ascended the ladder with the straw, and deposited it on some rails that lay across the great beams. He then threw down another flooring of rye, which he thrashed and finished as before. Thus he continued his labors until he thrashed five floorings, and on returning from throwing down the sixth and last, and in passing over part of the haymow, he fell off, where the hay had been cut down about six feet, to the lower part of it, which awoke him. He at first imagined himself in his neighbor's barn, but, after groping about in the dark for a long time, ascertained that he was in his own, and at length found

[1] Dornblüth, Geschichte einer Nachtwandlerin, Henke's Zeitschrift, xxxii. 2.

the ladder, on which he descended to the floor, closed his barn-doors, which he found open, and returned to his house. On coming to the light he found himself in such a profuse perspiration that his clothes were literally wet through. The next morning, on going to his barn, he found that he had thrashed during the night five bushels of rye, had raked the straw off in good order and deposited it on the great beams, and carefully shoved the grain to one side of the floor, without the least consciousness of what he was doing, until he fell from the hay."[1]

"A man in this state," says Falret, "has no longer the same relations with the exterior world. He enters into movements which seem the result of the will, since he avoids blows and falls with the greatest nicety; and yet he does not seem to see, or at least his sight appears very confused. The mind is evidently in action, since somnambulists often write things which they were unable to do when awake, maintain conversation, and perform actions implying regular ideas. And yet after the attack they preserve no remembrance of their thoughts, feelings, or actions, as if consciousness had been entirely obliterated whilst it lasted."[2]

Dr. Abercrombie's views on subject—somnambulist not responsible for his acts.

§ 496. The views of Abercrombie have been so long appealed to on this point that we cannot refrain from giving them here in full: "Somnambulism," he says, "appears to differ from dreaming chiefly in the degree in which the bodily functions are affected. The mind is fixed, in the same manner as in dreaming, upon its own impressions as possessing a real and present existence in external things; but the bodily organs are more under the control of the will, so that the individual acts under the influence of erroneous conceptions, and holds conversation in regard to them. He is also, to a certain degree, susceptible of impressions from without, through his organs of sense; not, however, so as to correct his erroneous impressions, but rather to be mixed up with them. A variety of remarkable phenomena arise out of these peculiarities, which will be illustrated by a slight outline of this singular affection. The first degree of somnambulism generally shows itself by a propensity to talk

[1] Upham on Mental Action, pp. 182, 183. See also article by M. Alfred de Maury, 18 Am. Journ. of Ins. 236.

[2] Leçons Cliniques de l'Aliénation Mentale, par M. Falret, Leçon 4, p. 121. Paris, 1854.

during sleep—the person giving a full and connected account of what passes before him in dreams, and often revealing his own secrets or those of his friends. Walking during sleep is the next degree, and that from which the affection derives its name. The phenomena connected with this form are familiar to every one. The individual gets out of bed; dresses himself; if not prevented, goes out of doors; walks frequently over dangerous places in safety; sometimes escapes by a window and gets to the roof of a house; after a considerable interval, returns and goes to bed; and all that has passed conveys to his mind merely the impression of a dream. A young nobleman mentioned by Hortensius, living in the citadel of Breslau, was observed by his brother, who occupied the same room, to rise in his sleep, wrap himself in a cloak, and escape by a window to the roof of the building. He there tore in pieces a magpie's nest, wrapped the young birds in his cloak, returned to his apartment, and went to bed. In the morning he mentioned the circumstance as having occurred in a dream, and could not be persuaded that there had been anything more than a dream, till he was shown the magpies in his cloak. Dr. Prichard mentions a man who rose in his sleep, dressed himself, saddled his horse, and rode to the place of a market which he was in the habit of attending once every week; and Martinet mentions a man who was accustomed to rise in his sleep and pursue his business as a saddler. There are many instances on record of persons composing, during the state of somnambulism: as of boys rising in their sleep and finishing their tasks which they had left incomplete. A gentleman at one of the English universities had been very intent during the day in composition of some verses which he had not been able to complete: during the following night he arose in his sleep and finished his composition, then expressed great exultation, and returned to bed. In these common cases, the affection occurs during ordinary sleep; but a condition very analogous is met with, coming on in the daytime, in paroxysms during which the person is affected in the same manner as in the state of somnambulism, particularly with an insensibility to external impressions: this presents some singular phenomena. These attacks in some cases come on without any warning; in others, they are preceded by a noise or sense of confusion in the head. The individuals then become more or less abstracted, and are either unconscious of any external impressions, or very confused

in their notions of external things. They are frequently able to talk in an intelligible and consistent manner, but always in reference to the impression which is present in their own minds. They in some cases repeat long pieces of poetry, often more correctly than they can do in their waking state, and not unfrequently things which they could not repeat in their state of health, or of which they were supposed to be entirely ignorant. In other cases they hold conversation with imaginary beings, or relate circumstances or conversations which occurred at remote periods, and which they were supposed to have forgotten. Some have been known to sing in a style far superior to anything they could do in their waking state; and there are some well-authenticated instances of persons in this condition expressing themselves correctly in languages with which they were imperfectly acquainted. I had lately under my care a young lady who is liable to an affection of this kind, which comes on repeatedly during the day, and continues from ten minutes to an hour at a time. Without any warning, her body became motionless, her eyes open, fixed, and entirely insensible, and she became totally unconscious of any external impression. She has been frequently seized while playing on the piano, and has continued to play, over and over, part of a tune with perfect correctness, but without advancing beyond a certain point. On one occasion she was seized after she had begun to play from the book a piece of music which was new to her. During the paroxysm she continued the part which she had played, and repeated it five or six times with perfect correctness; but on coming out of the attack she could not play it without the book. During the paroxysms the individuals are, in some instances, totally insensible to anything that is said to them; but in others they are capable of holding conversation with another person with a tolerable degree of consistency, though they are influenced to a certain degree by these mental visions, and are very confused in their notions of external things. In many cases, again, they are capable of going on with the manual occupations in which they had been engaged before the attack. This occurred remarkably in a watchmaker's apprentice mentioned by Martinet. The paroxysms on him appeared once in fourteen days, and commenced with a feeling of heat extending from the epigastrium to the head. This was followed by confusion of thought, and this by complete insensibility; his eyes were open, but fixed and vacant,

and he was totally insensible to anything that was said to him, or to any external impression. But he continued his usual employment, and was always much astonished, on his recovery, to find the change that had taken place in his work since the commencement of his paroxysm. This case afterwards passed into epilepsy. Some remarkable phenomena are presented by this singular affection, especially in regard to exercises of memory and the manner in which old associations are recalled into the mind: also, in the distinct manner in which the individuals sometimes express themselves on subjects with which they had formerly shown but an imperfect acquaintance. In some of the French cases of epidemic 'extase,' this has been magnified into speaking unknown languages, predicting future events, and describing occurrences of which the persons could not have possessed any knowledge. These stories seem, in some cases, to resolve themselves merely into embellishment of what really occurred, but in others there can be no doubt of connivance and imposture. Some facts, however, appear to be authentic, and are sufficiently remarkable. Two females, mentioned by Bertrand, expressed themselves during the paroxysm very distinctly in Latin. They afterward admitted that they had some acquaintance with the language, though it was imperfect. An ignorant servant-girl, mentioned by Dr. Dewar, during paroxysms of this kind showed an astonishing knowledge of geography and astronomy; and expressed herself in her own language in a manner which, though often ludicrous, showed an understanding of the subject. The alternations of the seasons, for example, she explained by saying that the world was set *a-gee*. It was afterwards discovered that her notions on this subject had been derived from hearing a tutor giving instructions to the young people of the family. A woman who was some time ago in the Infirmary of Edinburgh on account of an affection of this kind, during her paroxysms mimicked the manner of the physicians, and repeated correctly some of their prescriptions in the Latin language. Another very singular phenomenon presented by some instances of this affection is what has been called, rather incorrectly, a state of double consciousness. It consists in the individual recollecting, during a paroxysm, circumstances which occurred in a former attack, though there was no remembrance of them during the interval. This, as well as various other phenomena connected with the affection, is strikingly illustrated in a case de-

scribed by Dr. Dyce, of Aberdeen, in the Edinburgh Philosophic Transactions. The patient was a servant-girl, and the affection began with fits of somnolency, which came upon her suddenly during the day, and from which she could, at first, be aroused by shaking, or by being taken out in the open air. She soon began to talk a great deal during the attacks, regarding things which seemed to be passing before her, as a dream; and she was not, at this time, sensible of anything that was said to her. On one occasion she repeated distinctly the baptismal service of the Church of England, and concluded with an extemporary prayer. In her subsequent paroxysm she began to understand what was said to her, and to answer with a considerable degree of consistency, though the answers were generally, to a certain degree, influenced by her hallucinations. She also became capable of following her usual employments during the paroxysm; and at one time she laid out the table correctly for breakfast, and repeatedly dressed herself and the children of the family, her eyes remaining shut the whole time. The remarkable circumstance was now discovered, that during the paroxysm she had a distinct recollection of what took place in her former paroxysms, though she had no remembrance of it during the intervals. At one time she was taken to church while under the attack, and there behaved with propriety, evidently attending to the preacher; and she was at one time so much affected as to shed tears. In the interval she had no recollection of having been at church; but in the next paroxysm she gave a most distinct account of the sermon, and mentioned particularly the part of it by which she had been so affected. This woman described the paroxysm as coming on with a cloudiness before her eyes, and a noise in the head. During the attack her eyelids were generally half-shut; her eyes sometimes resembled those of a person afflicted with amaurosis—that is, with a dilated and insensible state of the pupil, but sometimes they were quite natural. She had a dull vacant look; but, when excited, knew what was said to her, though she often mistook the person who was speaking; and it was observed that she seemed to discern objects best which were faintly illuminated. The paroxysms generally continued about an hour, but she could often be roused out of them; she then yawned and stretched herself, like a person awaking out of sleep, and instantly knew those about her. At one time, during the attack, she read distinctly a portion of a

book which was presented to her; and she often sung, both sacred and common pieces, incomparably better, Dr. Dyce affirms, than she could do in a waking state. The affection continued to recur for about six months, and ceased when a particular change took place in her constitution."

§ 497. "We have another very remarkable modification of this affection, referred to by Mr. Combe, as described by Major Elliot, Professor of Mathematics in the United States Military Academy at West Point. The patient was a young lady of cultivated mind, and the affection began with an attack of somnolency, which was protracted several hours beyond the usual time. When she came out of it, she was found to have lost every kind of acquired knowledge. She immediately began to apply herself to the first elements of education, and was making considerable progress, when, after several months, she was seized with a second fit of somnolency. She was now at once restored to all the knowledge which she had possessed before the first attack, but without the least recollection of anything that had taken place during the interval. After another interval she had a third attack of somnolency, which left her in the same state as after the first. In this manner she suffered these alternate conditions for a period of four years, with the very remarkable circumstance that during one state she retained all her original knowledge, but during the other, that only which she had acquired since the first attack. During the healthy interval, for example, she was remarkable for the beauty of her penmanship; but during the paroxysm, wrote a poor, awkward hand. Persons introduced to her during the paroxysm, she recognized only in a subsequent paroxysm, but not in the interval; and persons whom she had seen for the first time during the healthy interval, she did not recognize under the attack."[1]

§ 498. Carus tells us in his lectures (Leipsic, 1831), of a clergyman who was a somnambulist, who would get up in his sleep, take paper, and write out a sermon. If a passage did not please him, he would strike it out, and correct it with great accuracy. We are told by Steltzer of a somnambulist who clambered out of a garret window, descended into the next

Instances of somnambulism

[1] Abercrombie on the Intellectual Powers, p. 238, etc.

house, and killed a young girl who was asleep there.[1] As a set-off to these, we have the case of a preassumed somnambulism for the purpose of cloaking an intended crime.[2]

Case nearly causing an involuntary homicide.

§ 499. A curious example of somnambulism, observed in a monk, is mentioned by M. de Savarin, as related to him by the prior of the convent where it happened, who was an eye-witness of the occurrence. "Very late one evening the patient somnambulist entered the chamber of the prior, his eyes were open but fixed, the light of two lamps made no impression upon him, his features were contracted, and he carried in his hand a large knife. Going straight to the bed, he had first the appearance of examining if the prior was there. He then struck three blows, which pierced the coverings, and even a mat which served the purpose of a mattress. In returning, his countenance was unbent, and was marked by an air of satisfaction. The next day the prior asked the somnambulist what he had dreamed of the preceding night, and the latter answered that he had dreamed that his mother had been killed by the prior, and that her ghost had appeared to him demanding vengeance, that at this sight he was so transported by rage, that he had immediately run to stab the assassin of his mother; that, a little while after, he awoke bathed in perspiration, and very content to find he had only dreamed." M. de Savarin adds, that, if under these circumstances the prior had been killed, the monk somnambulist could not have been punished, because it would have been upon his part an involuntary homicide.[3]

Opinion of Sir W. Hamilton that consciousness is present in somnambulism.

§ 500. "You have all heard," said Sir William Hamilton, in one of his lectures on metaphysics, "of the phenomenon of somnambulism. In this remarkable state the various mental faculties are usually in a higher degree of power than in the natural. The patient has recollections of what he has wholly forgotten. He speaks languages of which, when awake, he remembers not a word. If he uses a vulgar dialect when out of this state, in it he employs only a correct and elegant phraseology. The imagination, the sense of

[1] Steltzer, über den Willen, Leips., 1817–18, p. 273.

[2] Fahner, System der Ger. Arznei. 1 Bd. p. 43.

[3] Physiologie du gout, tome ii. p. 3. Paris, 1834.

propriety, and the faculty of reasoning, are all in general exalted. The bodily powers are in high activity, and under the complete control of the will; and, it is well known, persons in this state have frequently performed feats, of which, when out of it, they would not even have imagined the possibility. And, what is even more remarkable, the difference of the faculties in the two states seems not confined merely to a difference in degree. For it happens, for example, that a person who has no ear for music when awake shall, in his somnambulic crisis, sing with the utmost correctness and with full enjoyment of his performance. Under this affection persons sometimes lie half their lifetime, alternating between the normal and abnormal states, and performing the ordinary functions of life indifferently in both, with this distinction, that if the patient be dull and doltish when he is said to be awake, he is comparatively alert and intelligent when nominally asleep. I am in possession of three works, written during the crisis by three different somnambulists. Now it is evident that consciousness, and an exalted consciousness, must be allowed in somnambulism. This cannot possibly be denied; but mark what follows. It is the peculiarity of somnambulism—it is the differential quality by which that state is contradistinguished from the state of dreaming—that we have no recollection, when we awake, of what has occurred during its continuance. Consciousness is thus cut in two; memory does not connect the train of consciousness in one state with the train of consciousness in the other. When the patient again relapses into the state of somnambulism, he again remembers all that had occurred during every former alternation of that state; but he not only remembers this, he recalls also the events of his normal existence; so that, whereas the patient in his somnambulic crisis has a memory of his whole life, in his waking interval he has a memory only of half his life. At the time of Locke, the phenomena of somnambulism had been very little studied; nay, so great is the ignorance that prevails in this country in regard to its nature even now, that you will find this, its distinctive character, wholly unnoticed in the best works upon the subject. But this distinction you observe is incompetent always to discriminate the state of dreaming and somnambulism. It may be true that if we recollect our visions during sleep, this recollection excludes somnambulism, but the want of memory by no means proves that the visions we are known by others to have had were not common

dreams. The phenomena, indeed, do not always enable us to discriminate the two states. Somnambulism may exist in many different degrees; the sleep-walking from which it takes its name is only one of its higher phenomena, and one comparatively rare. In general, the subject of this affection does not leave his bed, and it is then frequently impossible to say whether the manifestations exhibited are the phenomena of somnambulism or of dreaming. Talking during sleep, for example, may be a symptom of either, and it is often only from our general knowledge of the habits and predispositions of the sleeper, that we are warranted in referring this effect to the one and not the other class of phenomena. We have, however, abundant evidence to prove that forgetfulness is not a decisive criterion of somnambulism. Persons whom there is no reason to suspect of this affection, often manifest during sleep the strongest indications of dreaming, and yet, when they awaken in the morning, retain no memory of what they may have done or said during the night. Locke's argument, that, because we do not always remember our consciousness during sleep, we have not, therefore, been always conscious, is thus on the ground of fact and analogy disproved."[1]

§ 501. Prof. Jessen, of Homheim, near Kiel, a distinguished practical alienist, gives the following:—

Statement of Prof. Jessen.

"On a wintry morning, between five and six o'clock, I was aroused, as I thought, by the head nurse, who reported to me that some people had come for one of the male patients, and who at the same time asked me whether I had any particular orders to give. I replied that the patient might depart, and after he had left the room I turned around to go to sleep again. All at once it struck me that I had previously not heard anything regarding the intended departure of this patient, but that only the prospective departure of a woman of the same name had been reported to me. This compelled me to inquire more particularly after the circumstances, and accordingly I lighted a candle, rose, dressed myself, and went to the room of the head nurse. To my surprise I found him only half dressed, and, in reply to my inquiry after the people who had called for the patient, he said, with an expression of astonishment, that he did not know anything of it,

[1] Lectures on Metaphysics, p. 282.

as he had but just left his bed, and no one had called on him. This answer did not arouse my consciousness, but I rejoined that then the steward must have been in my room, and that I should accordingly go to see and ask him regarding the matter. When descending a few steps in the middle of the corridor which led to the room of the steward, I suddenly became conscious of having dreamed only what until that moment I had believed to be an experience whose reality I had not doubted in the least."

III. MENTAL UNSOUNDNESS AS AFFECTING THE TEMPERAMENT.[1]

1. *Depression.*[2]

§ 502. By this term may be designated a condition of despondency which continues for a long time, even for years, without assuming the form of real aberration of mind, but which derives peculiar importance and significance in matters of penal jurisprudence, from the fact that in such cases a criminal act often introduces the transition to patent insanity, inasmuch as it makes its appearance as the first decisive symptom, which is rapidly followed by others.

Depression often a transition stage to insanity.

§ 503. To Morel we are indebted for the following sketch of primitive or simple depression.[3] As there exists a mania which shows itself rather in insanity of action than of mind (manie instinctive), so likewise there exists a state of melancholy without delirium. Without our often being able to instance other causes than those phenomena which accompany the change from adolescence to puberty, from puberty to age, and from mature age to the critical period; at these critical periods of life, we feel a vague weariness, a motiveless fear, an indefinable sadness, which sometimes is only transitory, and at others is the starting point of the most serious disturbances. It is, says Guislain, a state of sadness, of dejection accompanied with or without the shedding of tears, without any notable aberration of imagination,

Views of Morel on this topic.

[1] See Etudes Médico-Psychologiques sur l'Aliénation Mentale, par L. F. E. Renaudin, chapter II. p. 36. Paris, 1854.

[2] See Krahmer, Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851, § 109; Siebold, Lehrbuch der Gericht. Med. Berlin, 1847, § 200.

[3] Traité theorique et pratique des Maladies Mentales, par M. Morel, tome i. p. 386. Paris, 1852.

intelligence, or feeling. The heart apparently is the seat of the disease; but soon the malady shows itself in a prostration of all the intellectual powers, a state which absorbs all individual energy, and appears to leave only the capacity of suffering. There are few who have not experienced these painful feelings for a time; and if by an effort of reasoning we are able to affix the form of continuity to these sensations, we will have a correct idea of this intolerable state.

§ 504. When a like condition, adds Guislain, is accompanied with anxieties, groaning, sobs, a desire to commit suicide, or any other determination, it is no longer in its simplest state. . . . He proceeds to argue that depression can continue in connection with the above-mentioned tendencies. How else, he asks, could we explain those suicides without reason, those irregular actions of which we see so many examples in instinctive mania, the affection which, above all others, has the closest relation to melancholy? In the greater number of cases, these forms are distinguishable less perhaps by the diversity of the acts than by the nature of the depressive principles. We may readily admit that instinctive maniacs generally betray themselves by more capricious deeds, and by more sudden and more cruelly energetic and destructive determinations, than the simple hypomaniacs, who rather turn against themselves their fatal homicidal impulses. In the first case, also, the depravity of the instincts is often more connected with the organic affections, a vicious education, or a prior state of immorality, whilst in the latter class the impulse which the patients themselves deplore is the harder to be understood, because (1) the individual is generally placed in the most favorable social condition; (2) his education has left nothing to be wished for, and (3) his past history would never cause the actions to which he is irresistibly forced in this unfortunate unhealthy state to be expected.

Of Reid.

§ 505. "Depression of mind," says Reid, "may be owing to melancholy, a distemper of the mind which proceeds from the state of the body, which throws a dismal gloom upon every object of thought, cuts all the sinews of action, and often gives rise to strange and absurd opinions in religion, or in other interesting matters. Yet, where there is real worth at the bottom, some rays of it will break forth even in this depressed state of mind. A remarkable instance of this was exhibited in Mr. Simon

Brown, a dissenting clergyman in England, who, by melancholy, was led into the belief that his rational soul had gradually decayed within him, and at last was totally extinct. From this belief he gave up his ministerial function, and would not join with others in any act of worship, conceiving it to be a profanation to worship God without a soul. In this dismal state of mind he wrote an excellent defence of the Christian religion against Tindal's 'Christianity as Old as the Creation.' To the book he prefixed an epistle, dedicatory to Queen Caroline, wherein he mentions 'that he was once a man, but, by the immediate hand of God for his sins, his very thinking substance has, for more than seven years, been continually wasting away, till it is wholly perished out of him, if it be not utterly come to nothing;' and, having heard of her majesty's eminent piety, he begs the aid of her prayers. The book was published after his death without the dedication, which, however, having been preserved in manuscript, was afterwards printed in the 'Adventurer.' Thus this good man, when he believed that he had no soul, showed a most generous and disinterested concern for those who had souls. As depression of mind may produce strange opinions, especially in the case of melancholy, so our opinions may have a very considerable influence either to elevate or depress the mind, even where there is no melancholy. Suppose, on one hand, a man who believes that he is destined to an eternal existence; that He who made and who governs the world maketh an account of him, and hath furnished him with the means of attaining a high degree of perfection and glory. With this man compare, on the other hand, the man who believes nothing at all, or who believes that his existence is only the play of atoms, and that after he has been tossed about by blind fortune for a few years, he shall again return to nothing. Can it be doubted that the former opinion leads to elevation and greatness of mind, and the latter to meanness and depression?"[1]

§ 506. "A pleasant season," says Dr. Rush, "a fine day, or even the morning sun, often suspends the disease. Mr. Cowper, who knew all its symptoms by sad experience, bears witness to the truth of this remark, in one of his letters to Mr. Haly. 'I rise,' says he, 'cheerless and distressed,

Depression is often intermittent.

[1] Reid on the Active Powers of Opinion, p. 576.

and brighten as the sun goes on.' Its paroxysms are sometimes denoted 'low spirits.' They continue from a day, a week, a month, a season, to a year, and sometimes longer. The intervals differ—1, in being accompanied with preternatural high spirits; 2, in being attended with remissions only; and, 3, with intermissions, or, in other words, in correctness and equanimity of mind. The extremes of high and low spirits, which occur in the same person at different times, are happily illustrated by the following case: A physician in one of the cities of Italy was once consulted by a gentleman who was much distressed with a paroxysm of this intermitting state of hypochondriacism. He advised him to seek relief in a convivial manner, and recommended him in particular to find out a gentleman of the name of Cardini, who kept all the tables in the city, to which he was occasionally invited, in a roar of laughter. 'Alas! sir,' said the patient, with a heavy sigh, 'I am that Cardini.' Many such characters, alternately marked by high and low spirits, are to be found in all the cities in the world."[1]

§ 507. In cases of settled depression, the patient on the one hand is fully convinced that his notions and wishes ought to be realized; but on the other he feels the impossibility of effecting their realization. He, therefore, makes no effort to render possible the impossible; yet he cannot resign the ideal, which he bears in his bosom; he loves his fictions, or the objects of his wishes so much, that he cannot part with them. Thus he consumes his existence in a monotonous grief; he cannot take interest in anything except the object of his sadness.[2]

2. *Hypochondria.*[3]

§ 508. When the morbid despondency noticed under the last head extends to the general tone of bodily sensations, a condition

[1] Rush on the Mind, pp. 82, 83.

[2] Rauch's Psychology, 151.

[3] See Krahmer, Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851, § 109; Siebold, Lehrbuch der Gericht. Med. Berlin, 1747, § 208. See De l'Hypochondrie et du Suicide, par J. P. Palfret, Paris, 1822; Renaudin sur l'Aliénation Mentale, p. 99, Paris, 1854. See also on this point the following works: Confessions of a Hypochondriac, or the Adventures of a Hypochondriac in search of Health, Saunders & Otley, London, 1849; Review of same, Journ. of Psychol. Med. vol. iii. p. 1. See also an article in 20 Am. Pract. 19.

is produced which we commonly call *hypochondria*. In the inferior stages the patient retains sufficient self-control to conceal if not forget his condition, and proceed unhindered in his occupations; but in the higher degrees he becomes so absorbed in his bodily sensations as to exhibit it in his appearance and conduct, disregarding every effort made to raise his spirits, and reducing all his reflections to the common machinery of personal questions and answers.[1] As this sort of selfishness increases, the mind is often filled with envy, hatred, bitterness, suspicion, and revenge towards others, and particularly towards those in whom the patient believes himself to detect a want of sympathy, or even of respect, or whom he regards as the authors of his distress. The result of this is too apt to be a series of unjust surmises and accusations, personal ill-treatment of others, and even murderous threats and assaults against the supposed wrong-doers, as well as the commission of suicide. In the judicial scrutiny and consideration of such a case, it is essential to inquire how far and for what length of time the attention of the patient can be directed from his bodily feelings to other objects; what is his personal opinion of his own condition; whether any, and if any what, insane ideas possess his mind, and what is his general demeanor. Where the perceptive faculty is not so far involved in the progress of the disease as to falsify the impressions of the senses, and deprive the consciousness of the power of correcting them, the defendant, for reasons we have already given, is to be held responsible; but the judge in passing sentence will nevertheless take into account the morbid impulse which was a subsidiary cause in the commission of the crime.[2]

Hypochondria the state of total depression.

§ 509. The following description of the hypochondriacal character is to be found in the Médecine Légale de M. Orfila.[3]

"Hypochondriacs are distinctively remarkable for their exaggerated fears upon the state of their health, and the foolish ideas they give utterance to in expressing their sufferings. Their temper is very unequal; they pass almost without motive from hope to despair, from grief to gayety, from bursts of pas-

Description of hypochondriacs.

[1] Ellinger, p. 105.

[2] *Supra*, §§ 125 *et seq.* See the above views in Schürmayer, Gericht. Med. § 542.

[3] Tome i. p. 416. Paris, 1848.

sion to gentleness, from laughter to tears; many are timid, pusillanimous, fearful, morose, irascible, restless, hard to please, a torment and fatigue to every body. They are easily moved; a trifle vexes and agitates them, producing fears, torments, and attacks of despair. The greater number show a marked change in their affections; they are egotistical; the slightest motives cause them to pass from attachment to indifference or to hate. They are often susceptible of an exaltation or depression of spirits, of a rapid succession of the most opposite ideas and emotions, without the will being able to control the thought.

"But those thus affected have a very good judgment in whatever relates to their own interests, and generally in everything which is foreign to their health, unless the disease should end in a total loss of reason, a thing which is of very rare occurrence. The peculiar characteristics above described render hypochondriacs more likely to yield to fear, and more easily moved to contract engagements; and the faintest suggestions of danger exercise considerable influence upon their mind. Finally, the jealous, suspicious, irritable, headstrong character of hypochondriacs would be an extenuating circumstance, if, under a first impulse, they should commit a reprehensible act."

§ 510. "The hypochondriac, constantly preoccupied with his afflictions, seeks by every possible means to analyze them. He often feels his pulse, examines his tongue and his excretions, and frequently discovers in these investigations causes for fear or hope, which he sometimes, though the details may be very disgusting, takes a sort of pleasure in communicating to every body. The great desire to be cured induces him frequently to change his physician and his treatment. He seeks for instruction by reading medical books, and often changes his opinion regarding the nature of his malady, inasmuch as he applies to his own case all which he reads or hears of. The mere mention of a disease is sufficient to start the notion that he himself labors under it; and, influenced by this idea, he now discovers in the corresponding organs phenomena which he had never before experienced.

"But not always is it the fear simply of ordinary bodily diseases which occupies the attention of the hypochondriac and is the object of his anxiety. Frequently the mental element in his malady does not escape his notice, and the complete change of his

personality, the *possession* by morbid sensations and ideas, especially, however, a certain anomaly particularly in the mental sphere, in the sensorial sensations, whereby these, although perceived as formerly, no longer produce the same impressions, frequently form the great subject of his complaint. This last and very remarkable state, which the patients themselves have much difficulty in describing, which we also have ourselves observed in several cases as the predominant and most lasting symptom, is as well as possible described in the following letter of one of Esquirol's patients.

"I still continue to suffer constantly; I have not a moment of comfort, and no human sensations. Surrounded by all that can render life happy and agreeable, still to me the faculty of enjoyment and of sensation is wanting—both have become physical impossibilities. In everything, even in the most tender caresses of my children, I find only bitterness. I cover them with kisses, but there is something between their lips and mine; and this horrid something is between me and all the enjoyment of life. My existence is incomplete. The functions and acts of ordinary life, it is true, still remain to me; but in every one of them there is something wanting—to wit, the sensation which is proper to them, and the pleasure which follows them. . . . Each of my senses, *each part of my proper self, is as it were separated from me, and can no longer afford me any sensation;* this impossibility seems to depend upon *a void* which I *feel in the front of my head, and to be due to the diminution of the sensibility over the whole surface of my body, for it seems to me that I never actually reach the objects which I touch. I feel well enough the changes of temperature on my skin*, but I no longer experience the internal feeling of the air when I breathe . . . *my eyes see and my spirit perceives, but the sensation of that which I see is completely wanting*," etc.[1]

§ 511. That hypochondria, in its simple and primary forms, does not juridically divest the sufferer of responsibility, will be admitted when we recall the long number of patients, some of them among the most active and useful members of society, whom, if this position be accepted, it would be necessary to sequestrate at once in a lunatic asylum. But there are cases of aggravated and com-

Hypochondria does not destroy responsibility unless complicated and aggravated.

[1] Griesinger's Mental Pathol. Syden. ed. (1867) § 114.

plex hypochondria when the patient can be no longer considered a moral agent, and when it becomes necessary to strip him of his business capacity, and to place him under restraint. Leurot mentions, for instance, a hypochondriac who sold his farm, placing the produce in the funds, so as to be relieved from care—whose incessant attention was bestowed on his health—whose sole occupations were "ennui" and sleep—who at last would not make the effort of undressing himself, sat constantly in a half-darkened room, and who, in his absorbing sense of misery, seemed to lose taste, smell, and motion. A still more acute case is given by Morel, where the patient's intrusive misery was such that his demands for sympathy from his mother and sisters, and the nervous vehemence with which he forced his griefs upon them, operated to destroy their health. Of course, when hypochondria reaches such a pitch as this, sequestration is necessary to the welfare both of the patient and of his friends.

Is often complicated with other diseases diminishing responsibility.

§ 512. Nor should it be forgotten that hypochondria often is complicated with other forms of psychical disease by which responsibility is suspended. Thus with hypochondriacs illusions of personal danger often intervene; and these illusions are complex and occasionally overwhelming. Sometimes the sufferer is watched by an evil eye. Sometimes he is the victim of witchery, magnetism, or poison. Sometimes honor, reputation, liberty, are imperilled by a hostile conspiracy. An Orange Irishman, for instance, some years back, in Philadelphia, conceived himself to be in danger of his life from a conspiracy of Roman Catholics. He in consequence killed one of his supposed assailants; and, though there was too strong evidence of design on his part, and too clear proof of his consciousness of the illegality of the act, to permit his acquittal, yet the penal sentence imposed by the court was commuted by the governor to banishment. And it is possible to conceive cases of hypochondriacal delusions of such a nature that a person committing an offence under their influence may think he is doing not wrong but right. In such case responsibility for the particular act does not juridically exist.[1]

[1] *Supra*, § 125.

§ 513. Sometimes, as we are told by Dr. Rush, the pain of a bodily disease suspends, for a short time, the mental distress. Mr. Boswell, in his life of Dr. Johnson, relates a story of a London tradesman who, after making a large fortune, retired into the country to enjoy it. Here he became deranged with hypochondriasis, from the want of employment. His existence finally became a burden to him. At length he was afflicted with the stone. In a severe paroxysm of this disease a friend sympathized with him. "No, no," said he, "don't pity me, for what I now feel is ease compared with the torture of mind from which it relieves me."

Distress of body often may relieve distress of mind.

§ 514. Dr. Haindorft, in his German translation of Dr. Reid's "Essay on Hypochondriasis," in alluding to the possibility of a patient laboring under hypochondriasis being able, by an exercise of the power of volition, to control his morbid sensations, justly observes, "We should have fewer disorders of the mind if we could acquire more power of volition, and endeavor by our own energy to disperse the clouds which occasionally arise within our own horizon; if we *resolutely tore the first threads of the net* which gloom and ill-humor may cast around us, and made an effort to drive away the melancholy images of a morbid imagination by incessant occupation. How beneficial would it be to mankind if this truth were universally acknowledged and acted upon, viz. that our state of health, mental as well as bodily, principally depends upon ourselves!"

Hypochondria may be controlled by the will.

"By *seeming gay* we grow to what we seem."

It was the remark of a man of great observation and knowledge of the world, "Only wear a mask for a fortnight, and you will not know it from your own face."[1]

§ 515. A French writer mentions the case of a rich peasant who was possessed with the idea that he was bewitched, and who complained to his medical attendant that seven devils had taken up their abode in his body. "Seven, not more?" was the physician's inquiry. "Only seven," was the reply. The physician promised him to rid him of the visitors, one each day, upon condition that for the first six he was paid twenty francs, but for the seventh, who was the chief of the band, forty.

Or dispelled by deception.

[1] Winslow on Suicide, pp. 169, 170.

The patient agreed, and was subjected by the physician, who set apart the fee for charity, to a series of daily shocks from the Leyden jars, the seventh and last of which was so powerful as to produce a fainting fit in the supposed demoniac, who, however, awoke from it entirely freed from his delusion.[1]

§ 516. Burns suffered much from indigestion, producing hypochondria. Writing to his friend, Mr. Cunningham, he says: "Canst thou not minister to a mind diseased? Canst thou speak peace and rest to a soul tossed on a sea of troubles, without one friendly star to guide her course, and dreading that the next surge may overwhelm her? Canst thou give to a frame, tremblingly alive to the tortures of suspense, the stability and hardihood of a rock that braves the blast? If thou canst not do the least of these, why wouldst thou disturb me in my miseries with thy inquiries after me?" From early life, the poet was subject to a disordered stomach, a disposition to headache, and an irregular action of the heart. He describes, in one of his letters, the horrors of his complaint: "I have been for some time pining under secret wretchedness. The pang of disappointment, the sting of pride, and some wandering stabs of remorse, settle on my life like vultures, when my attention is not called away by the claims of society, or the vagaries of music. Even in the hour of social mirth, my gayety is the madness of an intoxicated criminal under the hands of an executioner. My constitution was blasted, *ab origine*, with a deep, incurable taint of melancholy that poisoned my existence."[2]

3. *Hysteria*.[3]

§ 517. *Hysteria*, which only attacks individuals of the female sex, or males having a feminine organization, resembles hypochondria in its mental and moral symptoms; but the nauseous and painful feelings manifest themselves in convulsions, and the alternation between the different states of feeling is far more abrupt.[4]

Hysteria much like epilepsy.

Hysteria presents the same difficult complications as epilepsy.

[1] Annales Méd. Psyc., 1847.

[2] Winslow on Suicide, 147.

[3] Siebold, Lehrbuch der Gericht. Med., Berlin, 1847, § 208; Krahmer, Handbuch der Gericht. Med. Halle, C. A. Schwetschke, 1851, § 110.

[4] Schürmayer, Gericht. Med. § 543; Krahmer, Handbuch de Gericht. Med. Halle, C. A. Schwetschke, 1851, § 109.

Psychical disease may either be intermingled with, or entirely absorb, physical. Sometimes the mental type may be that of ecstasy; sometimes that of profound terror-stricken anguish, influencing the patient to abnormal if not illegal acts.

§ 518. Liman[1] mentions as psychical symptoms of hysteria, irritability; impressionability; want of psychical energy and positiveness; thraldom to physical and psychical impressions; capriciousness; rapid change of mood on little or no cause; inclination to deceit, falsehood, exaggeration, and simulation; propensity to the odd, the eccentric, the evil, and the unworthy, coupled with sharp intelligence. These psychical traits, he mentions, are to be found, more or less pronounced, in connection both with the intermittent and the remittent corporeal symptoms of those suffering with hysteria; and these symptoms often, either in their own course, or in concurrence with other causes, mature into an insanity whose actions are progressively more and more wild, and in which self-control is ultimately lost. The *erotic* element, according to Liman, exhibits itself in this disease with much less frequency than is generally supposed. On the other hand, Morel calls attention to the well-substantiated fact that patients of these classes sometimes tenaciously cherish delusions and hallucinations that they have been the subject of sexual wrongs from others (*e. g.*, rape, abortion, impregnation); and detail the circumstances of such wrongs with a consistency and exactness which, in those unacquainted with the patient's condition, secure belief. Symptoms of hysteria.

§ 519. With this may be mentioned cases of intense domestic irritability, resulting in quarrels at home, and sometimes, as Liman mentions, in disputes with and rapid changes of medical attendants. The excitement is more intense at the catamenial period, and subsides during the intervals. So, also, with regard to admissions into and dismissal from asylums, which may rapidly alternate. These patients are the peculiar annoyances, so speaks this experienced observer, of such institutions. Nothing is acceptable to them but the past and the impossible; the present and the attainable are the causes of petulant disgust. Yet they are peculiarly subject to discipline. If this discipline can be firmly maintained, they may be controlled, if not cured.

[1] Liman's Casper, 1871, p. 443.

§ 520. The foro-psychical question in such cases is, are the sense of right, and the power to do what is right, destroyed? No doubt is there that in hysteria there sometimes exist such psychical illusions as make it necessary to answer this question in the affirmative. Patients afflicted with this disease, we are told by the experienced and accurate observers who have been just cited, sometimes believe, not merely that they have lost hand, eye, or ear, but that they are poisoned, or subjected to great indignities, which, if the delusion be sincere, they would naturally endeavor to resent. Yet the difficulty here arises from the tendency, sometimes epidemic, sometimes sporadic, in this class of patients to simulate. Any symptom which would increase personal importance, or draw attention, or excite sympathy, if not felt, will be feigned. No one who attends such patients but will be struck, indeed, with the fecundity with which new symptoms will be created when old ones have lost their effect. Hence it is that in hysteria there should be close scrutiny applied to all cases dependent on the sincerity of such delusions. No doubt, wherever it appears that a delusion is sincere, the patient is not responsible for an act committed under its stress. But in view of the fact that hysteria is fomented by indulgence—in view of the danger to the community which would result from the emancipation of such patients from penal control—in view of the injury to which they would themselves be subjected if they were as a class to be removed from the sphere of liberty tempered by law to that of confinement in lunatic asylums, under whose restraints it would be necessary to place persons so emancipated—hysteria itself cannot be juridically regarded as suspending moral agency unless mental unsoundness as an independent state be substantively proved.

Hysteria may produce delusions affecting responsibility.

§ 521. Attacks of hysteria, although in appearance bearing considerable analogy to those of epilepsy, rarely produce a state of complete insensibility, and, although they may last longer, they never leave behind them final bewilderment of mind. However frequently they may occur, they hardly ever produce mania or dementia, and therefore they rarely exclude responsibility.[1]

But attacks of hysteria rarely exclude responsibility.

[1] Briand, Méd. Lég., p. 569.

§ 522. Hysteria is described by Dr. Maudsley,[1] in his lectures (London, 1870), as sometimes exhibiting itself in acute maniacal excitement, with great restlessness, rapid and disconnected and yet not entirely incoherent conversation sometimes tending to the obscene, and perversity of conduct more or less incoherent and seemingly wilful. "With the perverted sensations and disordered movements there is always some degree of moral perversion. This increases until it swallows up the other symptoms; the patient loses more and more of her energy and self-control, becoming capriciously fanciful about her health, imagining or feigning strange diseases, and keeping up the delusion or the imposture with a pertinacity that might seem incredible, getting more and more impatient of the advice and interference of others, and indifferent to the interests and duties of her position. Outbursts of temper become almost outbursts of mania, particularly at the menstrual periods. An erotic tinge may be observable in her manner of behavior; and occasionally there are quasi-ecstatic and cataleptic states. It is an easily curable form of derangement if the patient be removed in time from the anxious but hurtful sympathies and attentions of her family, and placed under good moral control; but, if it be allowed to go unchecked, it will end in dementia, and it is especially apt to do so when there is a marked hereditary disposition."[2]

Dr. Maudsley's description of hysteria.

Hysteria, as an element in what is called religious insanity, is hereafter discussed.[3]

4. *Melancholia.*[4]

§ 523. Melancholia may be defined as settled and continuous depression. In its higher degrees, the various gloomy and morbid

[1] See also Dr. Hammond's Diseases of the Nervous System, N. Y., 1881, and authorities cited under this head.

[2] Body and Mind, London, 1870, p. 79.

[3] *Infra*, § 676.

[4] Siebold, Lehrbuch der Gericht. Med., Berlin, 1847, § 208. Dr. Cheyne, rather jocularly than otherwise, applied the term, "The English Malady," to that species of melancholy which is most affected by the weather and by other depressing circumstances. This term has been seriously adopted by Siebold, Gericht. Med. § 212. Melancholia Anglica, sive Autochira. Fr. B. Osiander, in his interesting volume on Suicide, discusses the same topic. Hannov., 1813, 8, § 207

Melancholia is settled and continuous depression.

feelings are accompanied by distinct imaginings, which take their character from the sort of agitation in which the disease commenced, the general opinions and character of the individual, the pursuits which last occupied him, and the trials to which he may have been subject.[1] For all these feelings the patient seeks explanations, and finds them either *in himself* (*melancholia concentrica*), or in *surrounding* things and circumstances (*melancholia peripherica*). In the *former* case he takes himself severely to task for small or inconsiderable errors, or declares, with an air of sincere conviction, that he has committed great crimes, as murder, etc., and has incurred, by his inexpiable fault, the displeasure of God and of the world, and eternal damnation. In *melancholia religiosa* such sufferers ask to be tried and punished; they complain of the loss of what is most dear to them, apprehend poverty for themselves and their families in the future, or even imagine themselves possessed by demons. In *melancholia dæmonica*, they accuse other persons of malevolence and persecution, to which they ascribe their ailments. It is characteristic of this phase of disease, that the patient never sees surrounding things as they are, but always in a light corresponding to his gloomy frame of mind; frequently, also, this false coloring turns into a real illusion of the senses, particularly in the peripheric form, which is the reason that it so frequently ends in lunacy. The external conduct of the patients, the manner in which they execute the dictates of their wills, is very various. In *melancholia attonita* they sit motionless and speechless; in other cases, they can hardly find words enough to depict their distress; sometimes they are perpetually in motion—*melancholia activa et errabunda*. In peripheric melancholy they scold and swear about their grievances, become noisy and excited, and resort to violent means of resistance or revenge. In this manner, melancholy often becomes the occasion of murderous assaults, and sometimes murders of the most cruel kind, as well as of suicide.[2]

[1] Schürmayer, Gericht. Med. § 544; compare Ellinger, p. 108; Leçons Cliniques sur l'Aliénation Mentale; Falret, Leçon 7th, p. 185. Paris, 1854. Etudes Medico-Psychologiques sur l'Aliénation Mentale. L. F. E. Renaudin, chap. iv. p. 178. Paris, 1854. See, for a case of periodic melancholy, The Med. Rec., Aug. 14, 1875. For articles on suicide see Proceedings of N. Y. Med. Leg. Soc. (N. Y. 1872), pp. 1–37.

[2] The above summary is taken from Schürmayer, Gericht. Med. § 544.

§ 524. Melancholia, or "Aliénation partielle depressive," as it has been called by Falret, has, as its name indicates, for its principal characteristic, a depression, slowness and prostration of all the faculties united with general anxiety. This fundamental disposition of the sensibility and intelligence produces, in the greater number of those thus affected, a crowd of analogous consequences. Everything is viewed by them in a distorted light; all their relations with the external world are changed; they look upon everything with repulsion and antipathy; they bear with difficulty the kindest remarks of their relations and friends, and consolation itself irritates them. In entire contradiction to nature, the patient cannot retire within himself. He finds nothing within but anxiety, doubt, and mistrust, both of himself and others. Everything seems changed around him. He is often afflicted, and sometimes irritated by it, and thinks the alteration due to those that surround him, rather than to any personal change. Thence come irritation, anger, and violence, against himself and others. He then abandons the world that injures him, and sinks into complete inactivity.

Characteristics of melancholia.

Frequently it is not only against the world in general, but against his best friends, that the patient directs his suspicions, his mistrusts, and his hatred. To this general state of depression, anxiety and gloominess succeed. After this comes both a physical and moral prostration, in which there is more or less complete suspension of sensibility and intelligence. Whilst the sensibility is thus oppressed and affected, the will is equally enfeebled, inactive, and powerless.

The physiognomy is concentrated and anxious, expressing dulness and stupidity, followed by habitual and sometimes entire silence, and slowness of movement carried sometimes to immobility. These external signs correspond with the internal condition we have just described, and form an exact picture of this kind of mental disease.

Among the sufferers of this class, some, feeling a general anxiety, think they have done a bad action, have committed a crime, suppose themselves reserved for severe punishments, both in this world and the other, and, overwhelmed with scruples, they criminate themselves for the most innocent actions of their lives, or imagine themselves possessed by the devil and abandoned of God. Others, in consequence of the sentiment of mistrust which controls them,

imagine themselves to be surrounded by spies or invisible enemies, and, according to their previous ideas, their education, or the age in which they live, think themselves under the power of sorcery, magic, magnetism, the police, etc. Others, entirely wrapped in their sadness, think themselves ruined, accused, dishonored, or even betrayed by their relations and friends. In a word, the delirious ideas which become the centre of the greater part of the preoccupations of the intelligence and of the feelings, and which appear, at first sight, to constitute all the delirium, are in reality only the relief to the general condition which gives birth to them. In spite of their infinite variety, they all partake of the general character of the disease.

There is not, then, in melancholy, as has often been asserted, a concentration of the attention, or even of all the moral and intellectual powers, upon one sad idea, but a general state of sadness and depression which shapes itself in one predominant idea, and manifests itself by a crowd of other morbid phenomena.[1]

It is often due to sexual causes.

§ 525. Melancholia is apt to arise in men from excessive sexual indulgence or self-abuse; in women from derangement of the menstrual functions. This is peculiarly the case with that revolution of the system which accompanies a cessation of menstruation. There are in this state "all sorts of anomalous sensations of bodily distress, attesting the disturbance of circulation and of nerve functions; and it is now that an insane jealousy and a propensity to stimulants are apt to appear, especially when there have been no children. When positive insanity breaks out, it usually has the form of profound melancholia, with vague delusions of an extreme character, as that the world is in flames, that it has turned upside down, that everything is changed, or that some very dreadful but undefined calamity has happened or is about to happen. The countenance has the expression of a vague terror and apprehension. In some cases, short and transient paroxysms of excitement break the melancholy gloom. These usually occur at the menstrual periods, and may continue to do so for some time after the function has ceased."[2]

[1] See Leçons Clinique sur l'Aliénation Mentale, de M. Falret. Leçon 9. Paris, 1854.

[2] Body and Mind, by Dr. Maudsley, London, 1870. See also Dr. Luke's Insanity of Pregnancy, Puerperal Insanity, and Insanity of Lactation; and Dr. Storer's Insanity in Women.

§ 526. In some phases of this disease, the motives are not present to the consciousness, and the act is committed in a state of mental confusion, preceded sometimes by the almost imperceptible symptoms of silent depression, sometimes by the traces broad and deep of havoc in the affective faculties, and accompanied often by a sudden loss of self-control, visible paroxysms of terror, and a fancied pursuit by fiends.[1] The transition from melancholy to mania is open to the simple explanation, that melancholia is the first stage of psychical disease in general, and contains within itself the germs of all other phases.[2]

May produce mental confusion and loss of self-control.

§ 527. In other cases there is also an absence of conscious motives, but in their place an uncontrollable restlessness, an indistinct but overawing feeling of dread, and an incessant morbid approach of those abnormal moral propensities which will be considered under the next head. Ellinger correctly observes,[3] that "impulses of this kind often excite the most desperate struggles in the mind; evoke the most various external means to overcome them; place the murderous instrument into the hands of the individual, from which reason wrests it again; drive him again into solitude and far from the subject of the mad desire, and induce him to give warning to the threatened victim, to plan and to attempt suicide; and, when at last the fatal deed is nevertheless accomplished, there is a calmness and a clearness in the manner in which he anticipates the impending punishment, which to an unpractised observer must exclude every idea of an underlying mental derangement. Such subjects either betray the ordinary symptoms of depression, or only those incident to the specific propensity, which throws the consciousness into a state of distraction, and fills the mind with fear and dread. In either case, the impulse whether preceded or not by a brief relaxation, comes suddenly, in which case it will be found in connection with disturbances of the bodily functions, among which may be enumerated cessation of the natural period or of other natural or ordinary evacuations, rush of blood to the head, exhaustion by loss of blood, protracted nursing, excesses, epilepsy, approach of severe attacks of sickness. The *immediate* occasion of the act may be the view of

And development of abnormal impulses.

[1] Ellinger, p. 112.

[2] Schürmayer, Gericht. Med. § 545.

[3] Ellinger, p. 114.

a naked figure, the sight of an execution, of blood, of a murderous instrument or other means of committing crimes, or the recital of such an occurrence; the *ultimate* cause is found, according to Ideler, in the associations of feelings and desires according to their contrast, and the struggle and contradiction thus arising."

Or conscious acts induced by hallucinations or delusions.

§ 528. In still another order of cases, as we are told by Schürmayer, the consciousness is not only in full possession of the motives, but the act is conceived on the ground of a chain of reasoning and executed with a degree of arrangement and circumspection apparently inseparable from a clear state of the understanding. Here, as will be seen more fully hereafter, the motives are sometimes hallucinations, particularly of the ear (voices heard), which give commands to the madman, sometimes a wish to die without the courage to commit suicide directly, but with the design of incurring capital punishment by the murder of others (persons the subject of an old grudge, or such as are entirely innocent, as children); sometimes the notion that the destruction of the world is at hand, or that a terrible misfortune impends, against which it was necessary to protect the object of particular affection, which is best effected by death. Under such circumstances, as will presently be more fully seen, suicide, or self-inculpation, is common, and sometimes a vindictive feeling against the supposed authors of the person's suffering, which the mind often debates with itself for a length of time, until all doubt is removed by some new hallucination.

Homicide or suicide under influence of depression.

§ 529. This brings us to the cases, to which reference has been elsewhere made,[1] of suicide, or of the homicide of children, under the influence of deep mental depression. The patient's condition becomes one of hopeless melancholy. The most terrible calamities he believes to be gathering over himself and those whom he loves. Life, if it continues, will be to them misery unutterable, incomparable. Death, under such circumstances, is a blessing. To invite it he considers a duty, and to kill his children, and then himself, the highest office of self-sacrificing love. This state has been well termed Præcordial Anguish. It has been so abundantly and unequivocally illustrated that as to its existence there can be no doubt. In addi-

[1] See §§ 155, 529, 636, and Appendix to 3d ed. of this work §§ 837, 839, 842.

tion to the cases already given, may be mentioned that of the father, referred to by Casper, who, before killing his children under the influence of this feeling, shook hands with them and caressed them, as if on the eve of a solemn and tender sacrifice which was to release them from all their cares.

§ 530. One peculiar phenomenon sometimes connected with this state has been noticed by psychologists. Between the resolution and the performance of the terrible act the mind of the patient becomes preternaturally calm. The tumult and terror which preceded the purpose have subsided. There may be even a sort of ecstasy in the relief from the agitation which had attended the prior conflict between affection in its lower and what is believed to be affection in its higher stage. This peculiarity, indeed, is common to sanity as well as insanity. When we have been torn by conflicting motives as to the duty of any particular step, and at last have come to a determination, even though this determination has been caused by the preponderance of a mere straw, then unrest is succeeded by rest, and our sole care is that the purpose be duly executed. Such periods of lull, and of quiet and calm preparation, have been sometimes observed in those who, under the influence of melancholy, have been parties to the fearful acts which have just been noticed. It has been hence superficially inferred that they were at the time sane. But the lull is no proof that there has not been a prior unloosening of the stays of sanity. All the fastenings of the mental mechanism may have been previously removed. The machine may run for awhile longer with apparent ease, but the crash will eventually come, as in an engine whose rivets have been withdrawn. Yet this unsoundness is not to be presumed. The mind's prior perturbations, the shocks to which it may have been previously subjected, its congenital or hereditary weaknesses—these must be proved. But when these are shown in such a way as to establish melancholia as a disease, the calmness which immediately preceded the act must not be treated as proof of sane design. From insanity this state of lull issued, and to insanity it will revert.[1]

Generally preceded by a state of calm.

[1] See, as illustrating this intermediate intelligence, two cases mentioned by Brierre de Boismont, in the Annales d'Hygiène, pub. 1863. Dr. Liman speaks of "hundreds" of suicides in melancholia, in whom, prior to the act, the same calmness was noticed. See, for this point viewed legally, *supra*, §§ 146–162.

CHAPTER V.

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I. GENERAL "MORAL INSANITY."

§ 531. THE doctrine of "Moral Insanity"—*i. e.* supposed insanity of the moral system coexisting with sanity of the mental—has been already examined in its legal relations, and has been shown to be incompatible not only with the reported decisions of the courts, but with the principles of philosophic penal jurisprudence.[1] It remains now to demonstrate that this doctrine is equally repugnant to sound psychology.

"Moral Insanity" repugnant to sound psychology

§ 532. The coexistence of mental sanity with an alleged moral insanity is, as will at once be seen, essential to the independent existence of this supposed phase of diseased irresponsibility. We must therefore exclude, from the category of distinctive "moral

[1] See *supra*, §§ 162–189.

insanity," all those cases in which the *mind* is insane. To establish this hypothesis, therefore, the following points must be proved:—

Depends upon false assumptions.

First, that the moral and mental functions are so separable that one can be insane without involving the other.

Secondly, that this severance actually exists in the cases which are vouched as establishing moral insanity.

Thirdly, that, even supposing such severance, the peculiar condition of morals that thus is assumed confers irresponsibility.

The *third* of these points has been already discussed, it being peculiarly a proposition of law.[1] The first and second we will now examine.

§ 533. Sir William Hamilton, to repeat a citation already made, in defining the mind, says: "If we take the mental to the exclusion of material phenomena, that is, the phenomena manifested through the medium of self-consciousness or reflection, they naturally divide themselves into three categories or primary genera: the phenomena of *knowledge* or *cognition*, the phenomena of *feeling* or of *pleasure and pain*, and the phenomena of *conation* or of *will and desire*." Mr. Bain, belonging to a very different school, arrives, as we have previously seen, substantially at the same result.[2] "The only account of mind strictly admissible in scientific psychology consists in specifying three properties or functions—*feeling*, *will or volition*, *and thought or intellect*, through which all our experience, as well objective as subjective, is built up. This positive enumeration is what must stand for a definition." He proceeds to say that "FEELING includes all our pleasures and pains, and certain modes of excitement, or of consciousness simply, that are neutral or indifferent as regards pleasure and pain. The pleasures of warmth, food, music, the pains of fatigue, *poverty*, *remorse*, the excitement of hurry and surprise, the supporting of a light weight, *the touch of a table*, *the sound of a dog barking in the distance*, are feelings. The two leading divisions of the feelings are commonly given as

Mental and moral functions not separable.

[1] See *supra*, §§ 163–189.

[2] Mental and Moral Science (2d ed.), London, 1868, p. 2. On this topic see essays by Dr. Elwell, Dr. Beard, Dr. Seguin, Dr. Jewell, and Dr. Folsom, in the North American Review for January, 1882.

sensations or emotions." "WILL or VOLITION *comprises all the actions of human beings in so far as impelled or guided by feelings.* Eating, walking, building, sowing, speaking are actions performed with some *end* in view; and ends are comprised in the gaining of pleasure or the avoiding of pain. *Actions not prompted by feeling are not voluntary.* Such are the powers of nature—wind, gravity, electricity, etc.—so also the organic functions of breathing, circulation, and the movements of the intestines." "THOUGHT, INTELLECT, intelligence or cognition includes the powers known as perception, memory, conception, abstraction, reason, judgment, and imagination. It is analyzed, as will be seen, into three functions, called discrimination or consciousness of difference, similarity or consciousness of agreement, and retentiveness or memory. *The mind can seldom operate exclusively in any one of these three modes.* A feeling is apt to be accompanied more or less by will and by thought. When we are pleased, our will is moved for continuance or increase of the pleasure (will); we at the same time discriminate and identify the pleasure, and have it impressed on the memory (thought)."

Thought necessary to all action.

§ 534. Let us apply this analysis to some of the cases which are adduced as illustrations of moral insanity by the writers on this specialty. A man, for instance, is assaulted by another, or conceives himself so to be, so as to be in danger of losing either life or that which is more precious to him than life. FEELING is the first function of the mind which is here addressed; but this necessarily involves THOUGHT. "Is the assault intentional?" "Was it designed?" "Can I infer, judging from former assaults, or from what I have observed or heard, that it is aimed at life?" "Can it be repelled in no other way than by killing the assailant?" Pursuing inquiries such as these, FEELING, guided by THOUGHT, directs the WILL to the particular object. Without THOUGHT, FEELING would strike blindly into mere space. Even in the lowest point of view, discrimination is needed to distinguish the victim from others, and judgment to determine that killing him is a proper act of self-defence. THOUGHT, therefore, is necessarily involved in the act of killing, and the killing takes place because the assailant thinks it best. To constitute a valid plea of derangement in such a case, it is necessary to show that the perceptive and reasoning powers

were deranged. Otherwise, the case would not differ from that of homicide in a sudden fit of rage.

§ 535. Or take the case of "kleptomania." The FEELING which lies at its base is longing for some particular thing. But to shape as well as to effectuate this longing, THOUGHT must be invoked. Thought is needed to identify the object with that which previously gave gratification; to distinguish it from other objects; to secrete it; to carry it successfully away. In true kleptomania, so far from the derangement being distinctively in the feeling, such derangement is to be peculiarly traced to thought or intellect. It is no mark of derangement on entering a jewelry store to desire a brilliant that may lie on the counter. But to *think* either that it is right to take it, or that it can be taken without disgrace, assumes an abnormal and insane condition of intellect.

§ 537. The same reasoning applies to all cases of alleged monomania. A child sets fire to a house (pyromania). Here the child selects the particular house by *thought;* applies the match with *thought;* is determined to the act by a mental process on whose sanity or insanity the question of responsibility depends. Or sexual propensity is yielded to without restraint (erotomania); and here, also, thought, in its lower phases of memory, distinction, and identification, is necessary to procure gratification, while in its higher phase of reason and sense of right, where it exists it creates responsibility. This form of insanity, in other words, cannot be psychologically shown, unless it affects *thought.*

§ 538. The difficulty is that "moral insanity," in the popular acceptation of the term, includes two distinct diseases. The first, following the phraseology of Bain and Hamilton, as just stated, is that of enfeebled or paralyzed thought, approaching dementia. Here, feeling, held in but slight check by the reasoning powers, acts on the will, involving thought only so far as is necessary to identify and secure the object of desire. The other case is that of delirious or deluded thought, where unreal objects are set up for feeling to desire. But in both cases, the primary seat of the disease is in THOUGHT and INTELLECT.

Ambiguity of terms.

§ 539. How unsatisfactory are the analogies which are invoked to explain this alleged *separateness* of the moral sense, will readily be seen. The reason, the memory, the moral sense, it is declared, are each packed away in a

Reason and moral sense are interdependent.

series of hermetical compartments; and, so far from their mutually commingling, one may be actually insane without the others being in any sense affected. Man is thus like an iron steamboat, whose hull is divided into a series of water-tight chambers, so arranged that if the rivets of one chamber loosen, or its plates decay, the injury sustained is to itself alone. But it would be far more correct to compare the *ego* to the steamer's machinery, in which the derangement of one particular part is the derangement of the whole. Taking reason in its large sense, we must all admit that reason and the moral sense are in the highest degree interdependent. Thus, if an act is repugnant to our moral sense, the closest logical process will fail to convince us of its propriety. On the other hand, waiving the question whether there is such a thing as an innate moral sense, there is no doubt that this function is one which, supposing it to be actually wanting, or naturally weak, may be built up by education.[1] Dr. Arnold, whose cheerful temper and whose liberal theology alike remove from him the suspicion of pessimism in this relation, and whose experience was wide and close, tells us that in the boy nature the moral sense is weak and capricious, and that "conscience" as a power is greatly developed by education. He quotes with emphatic approbation the well-known lines:—

> "The old man clogs our early years
> And simple childhood comes the last."[2]

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[1] See particularly *supra*, §§ 115, 188–403.

[2] On this point we have the following corroborating remarks of Dr. McFarland: "Another explanation of the phenomena termed moral insanity should not be lost sight of. We are apt to forget the vast conservative power of reason in saving man from the depraved appetites and instincts common to him with the brute creation. Swift has well shown the humiliation of our species when man's reason was given to the brute and himself left without it. We all remember, in the entertaining narrative of Captain Gulliver, what a sorry brute man becomes when thus transformed. A human being, born without reason, or possessing it only to a low degree, becomes an instance such as we often see, illustrating this point. The instincts of the idiot are low, and are prevented from becoming depraved only by the amount of reason which he has. The small degree of reason that he possesses may educate the faculties of fear, of censure and punishment, and love of approbation, and may cause him to imitate his superiors by a propriety of conduct that may set him above criminal acts. The same power exerted over the moral propensities by the processes of pure reasoning is also shown in the cases of children. Childhood, notwithstanding the praises bestowed on it as the un-

Few acts are so cruel, few so immoral, he tells us, as to shock the moral sense of boys steeped in the atmosphere of a public school. He applies to morals, though not in the same words, Fichte's aphorism as to faith; man's attitude in infancy is *yes;* in youth, *no;* in maturity, *yes.* The moral sense in infancy is obedience; in youth, chaos; in maturity, obedience. As we grow older and wiser and more thoughtful, a thousand things, at which our moral sense in youth would not pause, become to us abhorrent. And, if moral sense, in its higher relations, be not congenital, a consciousness that there is a law imposed on us which will punish us if we do wrong, acts as a substitute which rises in value precisely as the law is known to be executed evenly and surely. We may take, as illustrating this, those very criminals who are declared to be "destitute" of moral sense; men who present every test of what is called moral insanity; men who show no shame or remorse for wrongs done by them, and with whom the recollection of their crimes is as evanescent as their recollection of their daily meals. Yet even such men are arrested, when concocting crime, by the fear of punishment, if that fear is made sufficiently reasonable to them. They will, indeed, seek to gratify their passions, but they will do so in channels which punishment does not block up. They are like blockade runners who carefully scrutinize the coast—who avoid the roads on which the blockading squadron stands guard—

sullied spring-time of existence, does not compare with mature age in the rightfulness of its acts. The burglary and murder of birds-nesting peculiarly gratify the juvenile heart, and how often must the ghost of the family cat, done to death by truant hands, haunt the little murderer's pillow! Whoever has looked, too, upon a quarrel in petticoats, waged for a bit of cake, sees a ferocity as great almost as the death-struggle of mortal foes. Yet what but the power of pure reason, working through years, changes these robbers, murderers, falsifiers, and belligerents into discriminating judges and revered dispensers of the gospel of mercy and peace? And how easily and naturally will an inclination to those same acts return when that essence which has rescued from them is withdrawn.

"Hence the position taken, that moral insanity, if by that term is meant a disease of the effective faculties, in which the intellect has no share, has no proved existence; and that what has received that appellation is nothing more than either the result of a latent, undetected delusion, whose *modus operandi* we are unable to demonstrate, or the passive effect of a weakened influence of the reasoning powers over man's base instincts."—*Am. Journ. of Ins.*, July, 1863.

See, also, observations by Dr. Seguin, in the North Am. Rev., for Jan. 1882.

who lie outside until they discover some unguarded passage; and who then, under cover of night, with muffled wheels, and stealthy motion, slink in through the gap. If the venture cannot be made with good hope of success, then the adventurer creeps sulkily back. If it is known that the port is thoroughly guarded, then the attempt is not even made. All this shows reason, and reason sometimes of a high order, operating in such a way as to create obedience to law. Even the outlaw avoids the act which he knows the law will certainly detect and punish. Supposing, then, the compartment containing the moral sense to be actually empty—supposing, in other words, there be a man destitute of moral sense—then reason, saying, "if you do this you will be punished," comes in and fills the compartment with a principle, which, though inferior to disinterested virtue, yet is sufficient to preserve peace in the community, and to keep its most desperate classes in check.[1] These, it is true, may be said to be extreme cases. We may justly assert

[1] Garroters are as a class the most desperate and brutish of English criminals; and as long as the worst which the chances of conviction offered was teansportation, or imprisonment under the present humane mitigations of prison life, the passion for garroting was irresistible. It is otherwise, however, since flogging has been revived as a punishment for violent robberies. The following is from an English paper of 1872: "Two years ago the house of commons introduced and passed a measure providing for corporeal punishment by the common hangman in cases of garroting and robberies, with violence, from the person. An account of the prisoners flogged has just been issued. Only the initials of the convicts are given, with the nature, reasons, and amount of the punishment, the persons by whom it was ordered, and those by whom it was witnessed. In the seven years covered by the return, 5614 floggings were administered in England and Wales. The great instrument is still the birch, and boys are its chief subjects. Most of the boys thus birched were over ten years of age; the majority seem to be between eleven and fourteen. There are, however, a considerable number at eight and nine; about a couple of dozen at seven years of age, and one small incorrigible who stands in the catalogue as only four—which we are inclined to hope is a misprint of fourteen. He is down as having been sentenced at the Marylebone police court in April last, and as having received ten stripes with the birch. The more formidable instrument of punishment is, of course, only used for older criminals. The 'cat' appears to be used in about one case in fifty. In 178 cases it had been administered under the powers of the act of 1864. It is a noteworthy fact that since garroters have been sentenced to floggings the offence has almost disappeared from the criminal records of England." To same effect, see Statement of Sir Edward Thornton, in North Am. Rev., Jan. 1882, p. 7.

that there is no man entirely destitute of moral sense; that there is always some flickering of conscience, and that there is always a moral capacity which education develops or perverts. But this makes the case the stronger. Education is reason acting on certain supplied data; and it is the duty of government to make these data plain and right—to declare that crime will be followed by punishment—so that the right conclusions may be drawn. On either view we find reason either modifying the moral sense, or creating something in its place. So far, therefore, from reason and moral sense being separate and independent functions, they are so intimately allied that the one cannot be deranged without disturbing the action of the other. There can be no insanity of the moral sense which does not imply insanity of reason. There can be no insanity of reason which does not produce insanity of the moral sense.

§ 540. The second necessary factor to the reception of the doctrine is, as above stated, that this alleged severance of the moral and mental factors should appear to be not merely *possible* but *actual*, *i. e.*, that it should be proved by recorded cases of persons who are at the same time morally insane and mentally sane. If, as has just been seen, there can be no *moral* without *mental* insanity, it follows that in all cases where *moral* insanity exists, there must be *mental* disease, however occult. That such is the case will be hereafter shown, when the various forms in which alleged moral insanity exhibits itself will be specifically examined.

Burden on those who set up moral insanity.

As introductory to this inquiry, however, come properly the opinions of experts. *Does the weight of authority among experts substantiate the existence of this supposed distinctive disease?*

1. *Authorities in the affirmative.*

§ 541. For the idea of "moral insanity" we must go back to Ellinger, who speaks of it, though only speculatively, under the name of *melancholia sine delirio sive perturbatio mentis*, *mania sine delirio*. Pinel (1745–1826) made at one time the general statement "that there are madmen in whom there is no perceptible alteration of the intellectual process, of the perceptions, judging faculty, imagination, or memory, and yet a perversion of the manifestations of the will, in a blind impulse to the

Ellinger and Pinel.

commission of violence, or even of bloodthirsty rage, without any assignable dominant idea, any delusion of the imagination, which could cause such a propensity." Pinel is no doubt entitled to the highest respect, both for his skill and his humanity. Under his administration, the Bicêtre and the Salpêtrière were in time rescued from barbarous neglect, and placed in a condition of comparative health, moral as well as physical. A rightful reaction from the cruelty of the old French conception of insanity, acting, it is true, in his case on a mind not free from romanticism, naturally led him to accept Rousseau's idea that crime is itself an insanity. Yet, when we scrutinize his writings, we will be surprised at finding how cautious his speculations really were. *Manie sans delire* he no doubt spoke of as a specific form of insanity; but the illustrations he used to establish this are all cases of melancholia or of suppressed mania, whose distinctive feature was not the absence of mental disturbance, but simply the absence of delirium and incoherence. He positively tells us that he has rarely seen cases of this class in which the mind was not "changed or perverted."

Esquirol.

§ 542. Esquirol (1772–1840) was Pinel's assistant at the Salpêtrière, and imbibed, though under more strictly scientific conditions, his master's humanitarian views. But he concedes that psychologically there can be neither "moral insanity," nor "reasoning mania," nor insanity of any kind, in which the understanding is not "more or less affected." In fact his argument on this point is precisely that used in the following pages to show the psychological absurdity of an exclusively moral insanity.

"*Were it not thus*" (that the understanding is affected), "*the insane would permit themselves to be controlled by their understanding, and would discover that their views are false, and their actions unusual and strange. Their understanding is more or less at fault; it has lost its influence over the will, and is no longer in harmony with the other faculties. Among the insane who, without motive, are drawn away instinctively to the commission of reprehensible acts, which would be criminal if they enjoyed the use of their reason, intellectual action is suspended.*"[1]

[1] For the translation and citations of this and the prior quotation I am indebted to an article by Dr. Chipley, in Am. Journ. of Ins. for 1866 (vol. 23), p. 30.

§ 543. To Gall (1758–1828) we are indebted for most of the well-known and well-used anecdotes which form the chief proof-cases of moral insanity. Like Pinel, of whom he was the contemporary, he was tinged in his philosophy by the sentimental humanitarianism of Rousseau; but unlike Pinel, he was as devoid of any practical experience as an attendant on the insane as he was deficient in scientific accuracy as a psychologist. Of the truth of his phrenological surmises it is unnecessary here to speak; it is sufficient to say that he based these surmises on statistics the most careless. Reports of experts, testimony which had been rendered on judicial examinations, judgments of courts, seem to possess no interest to him; and most of the proof-cases already alluded to, and which hereafter will frequently recur to our attention, are cited by him from "personal observation," or from "German newspapers," without any references which will enable the citations to be verified. Nor does he pretend to give a full report even of those cases which without a full report would be worthless. Thus he tells us of persons who had "irresistible impulses" to commit certain crimes; but he gives us no evidence from which we can infer that the case, having been duly explored, was not one where general insanity could be proved. It was this looseness which, notwithstanding the ingenuity of the *Recherches sur le Système Nerveaux*, etc., presented by him to the Academy, left him with but a single vote when his name was proposed for membership to that body.

Gall.

§ 544. To Dr. Prichard (1786–1848), however, the term "moral insanity" owes its origin, and the idea, such as it is, its conception. His scientific researches were mainly in ethnology. Psychology received from him little notice, nor does it appear that until 1841 he paid much attention to the condition of the insane. His practice, down to that period, was in Bristol, England, but his reputation was rather literary than medical; and no one can glance at the medical controversies of the day without seeing that his rank in his own profession was not high. Hence it was that the term "moral insanity," when introduced by him, was often treated with ridicule, and was invested with an extreme meaning which he never intended to convey. For he is far from saying that the "morals" could be exclusively and irresponsibly insane. He tells us that

Prichard the originator of the term.

in "moral insanity" there is "in many cases" "hereditary tendency to madness;" in others, prior "madness;" in others, "a slight attack of epilepsy, or some fever or inflammatory disorder."

§ 545. Prominent among more recent exponents of this view is Dr. Ray. "In fact, it has always been observed," says this eminent and experienced physician, "that insanity as often affects the moral as it does the intellectual perceptions. In many cases there is evinced some moral obliquity quite unnatural to the individual, a loss of his ordinary interests in the relations of father, son, husband, or brother, long before a single word escapes from his lips 'sounding to folly.' Through the course of the disease the moral and intellectual impairments proceed *pari passu*, while the return of the affections to their natural channels is one of the strongest indications of approaching recovery. Such being the fact, it ought not to be a matter of surprise that in some cases the aberration should be confined to the moral impairment, the intellectual, if there be any, being too slight to be easily discerned."

In later times, Ray.

§ 546. Bearing on the question on its physiological side, we have the followed observations of Dr. Carpenter:—

Carpenter.

"The more active forms of delirium pass by almost imperceptible gradations into the state of *mania*, which is usually characterized by the combination of complete derangement of the intellectual powers with passionate excitement upon every point which in the least degree affects the feelings. There is, however, a considerable amount of variety in the phases of mania, depending upon differences in the relative degree of *intellectual* and of *emotional* disturbance. For there may be such a derangement of the former as gives rise to complete incoherence in the succession of ideas, so that the reasoning power is altogether suspended; and yet there may be at the same time an entire absence of emotional excitement, so that the condition of the mind is closely allied to that of dreaming or of rambling delirium. On the other hand, the intellectual powers may be themselves but little disturbed, the trains of thought being coherent, and the reasoning processes correctly performed; but there may be such a state of general emotional excitability, that nothing is *felt* as it should be, and the most violent passion may be

aroused and sustained by the most trivial incidents, or by the wrong ideas which are formed by the mind as a consequence of their misinterpretation. Between these two opposite states, and that in which the disturbance affects at the same time the intellectual and emotional parts of the mental nature, there is a complete succession of transitional links; but under all the phases of this condition (these often passing into each other in the same individual) there is one constant element, namely, the deficiency of volitional control over the succession of thought. This deficiency appears to be a primary element in those forms which essentially consist in intellectual disturbance; whilst in those of which emotional excitement is the prominent feature it seems rather to result from the overpowering mastery that is exercised over the will by the states of uncontrollable passion which succeed each other with little or no interval. It seems probable, however, from the phenomena of intoxication, that the very same agency which is the cause of the undue emotional excitability also tends to produce an absolute diminution in the power of volitional control."[1]

§ 547. As inclining to accept the doctrine of *mania sine delirio*, though with great cautiousness of expression, we may cite Morel, a recent distinguished French writer on insanity, from whom copious translations are made in the third edition of this work. Morel.

§ 548. Campagne[2] may be also ranked as a modified adherent of the same school, though, with the usual French passion for novel discrimination, he expurgates from his "moral insanity" all the supposed "moral monomanias," and ends by rejecting Pinel's descriptive title, "*folie raisonnante*." Campagne.

§ 549. M. Brierre de Boismont[3] has been cited as a vindicator of the same doctrine, though not very accurately. In the first place, it may be observed that he disowns the French parentage of the disease, calling it the "moral insanity of the English;" closing his eyes to the fact that it is repudiated *in toto* by English jurists. In the second place, when he comes to define this "moral insanity of the English," he gives Brierre de Boismont.

[1] Carpenter's Physiology, Phil., 1856, §§ 704, 707.

[2] Traité de la Manie Raisonnante, par le Docteur Campagne. Paris, 1869.

[3] See his essay in Annales d'Hygiène Publique, Nos. 53, 54. 1867. See Maschka's Handbuch Gerich. Med. Tübingen, 1882.

symptoms very different from that phase of moral insanity which is described by exponents of this view among ourselves. Thus he declares that the disease in question is but a symptom or manifestation of general insanity. Intellectual derangement exists and will be displayed by the patient when off his guard. A cautious and protracted examination will even discover marks of mania in his letters. He does not trouble himself, we are further informed, about his acts of guilt, and generally does not regard them as wrong. Certainly this "moral insanity of the English" would not be regarded by English writers of this school as convertible with moral insanity as defined by themselves.

§ 550. Mittermaier, a jurist of great ability, has also been cited as approving this view; but, when his writings on this topic are scrutinized, it will be found that this assumption is erroneous. In his edition of Feuerbach's *Lehrbuch des Peinliches Rechts*,[1] he is careful to declare (1), that the so-called latent insanity (*amentia occulta*) is not a substantive, independent disease, and (2) that the assumption of *monomania* is gratuitous, because all alleged cases of *insane* monomania are resolvable into other forms of disease, and in *sane* monomania, responsibility is not extinguished. This brings him to the question of "irresistible" impulse. He admits this condition, but he speaks of it as the incident of disease; and he links the symptom with melancholia, maintaining that *when* thus constituted there exists a powerful impulse, an irresistible force (*ein gewalthätiger Trieb, eine unwiderstehliche Kraft*). This is very strong language; but he adds that to constitute this state, there must be at the time a suspension of self-consciousness. When this is conceded, and when we remember that he rejects the hypothesis both of *amentia occulta* and of *monomania*, we find that all that he admits is that in certain states of mental disease, there are, in connection with melancholia, irresistible impulses.

Mittermaier has been incorrectly cited as approving this view.

§ 551. But the most consistent and philosophical vindication of these views is to be found in the *Psychologie Naturelle*, or *Etude sur le Traitement des Aliénés et des Criminels*, by Dr. Prosper Despine, published in Paris in 1868. Capital punishment this learned theorist emphatically

Its most consistent advocate is Prosper Despine.

[1] Giessen, 1847, p. 169, § 90*a*.

denounces as an invasion of inalienable human rights. Retributive punishment of any kind is to be discarded, and only such punishment as is reformatory applied. Moral sense, he declares, is not the result of knowledge, and cannot be acquired. Some men are destitute of it, and these men are not to be taught. Such a deficiency is moral insanity or moral idiocy. There may be intellectual clearness, and the capacity to reason accurately, coexistent with this derangement of the moral sense. To sustain this position, Despine is obliged to start a new definition of free will (libre arbitre), which he informs us can only exist when there is capacity to act from a sense of duty. *He who acts from other motives than a sense of duty is not a free agent.* Hence from the category of free agents are to be removed (1), he who does acts which appear to him indifferent, *i. e.* neither good nor bad, and (2) he who does an act which appears pleasant to him, because it is pleasant. Duty he declares to be the great moral motive of life, compared with which all other moral motives are coarse and egoistic. He alone who acts in obedience to duty is free from selfishness and egoism. He, for instance, who obeys his parents from *love* is egoistic and selfish. He obeys from the pleasure he receives in obeying. He who obeys from *duty*, on the other hand, acts irrespective of his own pleasure and advantage. He alone is unselfish. Yet duty is the high prerogative and the exclusive test of a moral agent. Except by those who are governed by a sense of duty, there can be no moral agency. He who is governed, not by duty, but by affection, or by any other form of feeling (the author forgets that sense of duty is also a feeling) simply follows the lower animals in the points in which they differ from man. Hence it is, according to Despine, that he alone who acts under a sense of duty is responsible. Those who are destitute of a sense of duty are not responsible. These propositions are supported by a very copious list of criminals whom Despine announces to have been destitute of moral sense; which, with a boldness of assumption like that which characterizes his other psychological assertion, he declares to be proved by an absence in such cases of remorse or repentance for their evil deeds. In other words, where there is no remorse there is no moral sense, and where there is no moral sense, there is no responsibility, and where there is no responsibility there is no proper punishability. And this is then carried a stage further by the declaration that absence of moral

sense is to be inferred from the commission of all gross and cruel crimes, and hence that such crimes imply irresponsibility. In other words, every great criminal is, in the moment of his crime, morally insane; and it is as unjust to punish such as it is unjust to punish lunatics. The fallacy of this reasoning rests, it need scarcely be said, in the assumption that "sense of duty," like the various other faculties and properties of the mind, is contained in a separate and hermetical compartment; and that, when this compartment is empty, it cannot be filled by reason. But there is no such separation, as has been already fully shown, of the mind's several faculties and functions; and it is notorious that in persons most destitute of natural sense of duty, this faculty may be supplied by reason. A man may naturally, for instance, be destitute of a sense of duty to government; but let government show that it means to be respected, and this sense of duty will soon spring up. So a child who, under a lax and indulgent mother, shows no sense of duty to parents, will soon, on the intervention of a firm and wise father, learn that there is such a duty, and act accordingly. Enlightened duty, in fact, is often the creature of positive law. Of course as to the insane there is no capacity to determine this law, and no material, therefore, from which duty can be deduced. But in the sane, it is the business of the law to create and guide this sense of duty, and this must be done by precept and penalty.

2. *Present weight of authority is in the negative.*

§ 552. Among those by whom the theory was contested immediately after its promulgation may be mentioned Heinrich[1] and Leubuscher,[2] two very experienced German psychological physicians. With these may be classed, though later in date, Dr. Gray, of New York, whose great practical experience is given in a series of articles in the American Journal of Insanity. It is interesting to observe also that in five essays by eminent psychological physicians (Dr. Elwell, Dr. Beard, Dr. Seguin, Dr. Jewell, and Dr. Folsom), in the North

On the negative side are Heinrich, Leubuscher, and Gray.

[1] Kritische Abhandlung über die von Prichard als Moral Insanity geschilderte Krankheitsform. Allgemein. Zeitschr. für Psychiatrie, V. Bd. 4 Hft.

[2] Bemerkungen über Moral Insanity und ähnliche Krankheitszustände. Casper's Wochenschr., Nr. 59 u. 51.

American Review for January, 1882, "moral insanity," as such, finds no support.[1]

[1] From the London *Law Times* of Dec. 17, 1881, we take the following extract from the *Lancet*, a journal which speaks with high medical authority :—

"We fancied the 'plea of insanity' had been reduced to absurdity in the ridiculous attempt made to show that Lefroy was insane; but it seems that the apotheosis of stupidity is to take place in America. It is high time the nonsense recently talked and written about 'irresponsibility' should be exposed and ended. If the supreme triumph of medical psychology is to be sought in the attempt to prove that men are mere machines, and that the wrong they do is not their doing, but the outcome of disease, the sooner this branch of science is discountenanced by the common sense of the profession the better will it be for the credit and influence of our cloth. If a man is not acting under a recognizable and formulated delirium when he commits a crime, he is clearly responsible, and ought to be so held unless he is unquestionably, and on grounds other than those arising out of or associated with his crime, shown to be insane. The mistake into which 'experts' and those who follow their lead commonly fall is to confound the evidences of a neurotic constitution with the symptoms of mental disease. The inheritor of an organism which predisposes to insanity is not necessarily insane. Lefroy was not insane, and Guiteau is not insane. The only insanity accruing to the latter case is that which those who support the plea may themselves import into it. The position of matters in regard to this question is becoming one of exceeding gravity, and it will soon need to be very seriously discussed."

The *Times*, in a leading editorial, says :—

"The trial now in progress at Washington and the controversy which took place just before Lefroy's execution are foretastes of a discussion which is pretty sure to recur whenever any crime a little out of the common order is committed. The fact is that opinion has got decidedly astray as to insanity. People have cast away the old notions without getting any safe or certain substitute for them. Was there ever a more striking scene of confusion than that which is repeated day after day at Washington? The witnesses are at sixes and sevens. Each expert feels bound to start a separate theory. One doctor, who thought Guiteau insane, threw a vivid light on the value of his testimony by adding that one of every five persons in business might be considered as on the border line of insanity. Others were certain of the prisoner's insanity because he has talked so much about being inspired. Some of the experts are most influenced by the shape of his head; others by the strangeness of his utterances. The poor jurymen are to be pitied if they try to sift out the few grains of wheat in this prodigious heap of chaff. Unfortunately, they are not likely to be better off if they shut their ears to the 'mad doctors,' and try to follow the legal test of insanity. That has, no doubt, the merit of definiteness. It may be arbitrary; it is at least clear. Whether a man knew that he was doing wrong or not is a test which the dullest juryman can understand and apply. But

§ 553. Explicit in rejecting this hypothesis is Schürmayer. He insists that it is *not to be supposed that a single impulse is diseased*,

great authorities quote Pinel, and say that this is a criterion worthy of the darkest ages, and that if it were put in practice, humanity would be shocked at the consequences. Only a few lunatics are wholly destitute of the sense of right and wrong. Maniacs who kill their children or their wives in paroxysms of passion have often an uneasy sense that they are acting wrongly; to escape some terrible and oppressive phantom of the brain, they are impelled to stab or mutilate those who are dearest to them. The 'mad doctors'' view of the matter is that we should put the legal test aside as antiquated; that we should recognize in courts as elsewhere the existence of a vast number of types of insanity; that what Pinel called 'madness without delirium' is common; and that we should refrain from punishing many persons whom the legal theory would consign to prison or to the scaffold. It is amazing what an extension is thus given to insanity. Let any one look into a book of the sixteenth century about *Disquisitiones Magicæ*, or the science of *diablerie*, as then understood, and it will be seen that, making allowance for alteration of language and ideas, there is something like resemblance between the witch-finders of other times and some of the ingenious specialists of the present day. The latter do not talk of persons being possessed with or agitated by demons. They may quote a Greek word instead of imagining the presence of an evil spirit. But both agree in their ingenuity in detecting the existence of mental anomalies. What adds to the confusion of simple people is that lawyers also are found to be divided in opinion as to this matter. It is true that ever since MacNaghten was tried for the murder of Mr. Drummond the test in criminal matters has been that 'if the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable.' But even lawyers are not quite satisfied with this criterion. Certainly it is not accepted in all systems of jurisprudence. When the present criminal code for Germany was being prepared, the framers of it, of course, discussed the question of sanity; and the suggestions offered were most diverse. The conclusion ultimately arrived at was very different from the test in use here. So shaken by criticism is the legal standard that it is every-day experience in courts of justice that counsel put forward a plea of insanity when there is not the slightest pretence for suggesting that the prisoner did not know what he was about. And what is more, this is often done with success. The jury are merciful, and side with the doctors against the lawyers. Indeed, the legal theory in all its strictness is practically obsolete. No jury, for instance, would be got to convict a person who, knowing that it was contrary to the law to kill, took the life of some one whom he believed he was providentially called upon to destroy. In one class of cases the medical theory of insanity may be said to have triumphed. An eccentric person makes a will or executes a deed in favor of a stranger. He leaves his property to the Crown. He directs his body to be dissected. His will is disputed by his relatives. They have not got to show that he was imbecile or a manaic, or that he was oblivious

while all the other functions of the mind retain their healthy action. While the entire intellect enjoys sound

Schürmayer and Winslow.

of all moral distinctions. They may admit that he was clever and shrewd and of more than average intelligence, and yet impeach his fitness to make a will. The late Mr. Smee, once secretary to the committee of treasury of the Bank of England, was a competent man of business; he took an active part in politics; he wrote shortly before his death a clever pamphlet on the malt tax. Yet he labored under a hallucination that he was the son of George IV., and a will by which he left his property to the corporation of Brighton was set aside on that account. In fact, in the probate court, the doctors' view, that a partial delusion not in any way affecting a man's sense of right and wrong may be treated as insanity, is acted upon. At the Old Bailey it is otherwise."

The New York *Tribune* of January 2, 1882, gives the following summary of the expert testimony in the Guiteau case :—

"Twenty-three physicians have been examined upon the stand with regard to insanity. One, Dr. Fordyce Barker, was questioned generally upon the subject, as bearing upon responsibility for crime, etc., without any direct reference to the prisoner. Seven physicians were asked and answered a hypothetical question for the defence, which assumed the insanity of the prisoner, and could hardly be answered, if at all, in any other way than by an admission that, assuming the statements to be true, he was insane. These were Dr. Charles H. Nicholas, of the Bloomingdale Asylum; Dr. Charles F. Folsom, of the Harvard Medical College; Dr. Golding, of the Government Hospital for the Insane; Dr. James H. McBride, of the asylum near Milwaukee, Wis.; Dr. Walter Channing, of Brookline, Mass.; Dr. Theodore W. Fisher, of Boston, and Dr. James G. Kiernan, of Chicago. The defence made no attempt to elicit from these gentlemen the result of examinations made at the jail. It is understood that if they had been questioned upon this point, most, if not all, of them would have pronounced Guiteau sane.

"Fourteen experts in insanity have testified that Guiteau is, in their opinion, sane. These included four experts originally summoned for the defence: Dr. Samuel Worcester, of Salem, Mass.; Dr. Theodore Dimon, of Auburn, Dr. Selden H. Talcott, of the New York Homœopathic Asylum at Middletown, and Dr. Henry P. Stearns, of the Retreat for the Insane at Hartford, Conn. The remaining ten were Dr. Loring, the oculist, Dr. Allan McLane Hamilton, of New York; Dr. Janin Strong, of the asylum near Cleveland, O.; Dr. S. M. Shew, of the Middletown (Conn.) Asylum; Dr. Orpheus Evarts, of the College Hill Asylum, near Cincinnati; Dr. A. E. Macdonald, of the New York City Asylum; Dr. Randolph Barksdale, of the Richmond Asylums; Dr. John H. Callender, of the Nashville Asylum; Dr. Walter Kempster, of the Northern Asylum of Wisconsin, and Dr. John P. Gray, of Utica, N. Y. All these gentlemen positively pronounced Guiteau sane. To their number can be added Dr. Noble Young, the jail physician. Of the twenty-four physicians in all examined, one only—Dr. E. C. Spitzka, of New York—gave it as his personal judgment that the prisoner is insane. There were a number of experts in attendance, such as Dr. Pliny Earle, who would have testified that Guiteau was sane, but were al-

health, there is nothing in which a morbid desire of theft, murder, etc., could originate, and such a phenomenon is a psychological impossibility, and the assumption of such requires a psychological contradiction. A *mania sine delirio*, a mania without a morbid participation or disturbance of the perceptive faculties, is, therefore, out of the question, as a desire to injure or destroy is impossible without an act of the mind by which this purpose is entertained, and as reason and understanding are alike disordered whether they insinuate a wrong motive for the morbidly-conceived purpose of the act, or whether they entirely omit the suggestion of any reason whatever.[1]

So, also, Dr. Winslow: "Is there not," he says, "a mysterious, inscrutable, and inexplicable *oneness* in the constitution of the human mind, defying all attempts at an accurate and minute classification and separation of its powers? If such a state of mutual dependence, action, and union obtains between various states of mind (I will not use the arbitrary term 'faculty' or 'power') in a condition of health, *à fortiori*, how impossible it is to disjoin, separate, and individualize the mental faculties when under the influence of disease. Can we draw the line of demarcation between a diseased and healthy condition of the delicate structure of the vesicular neurine of the brain? Is it not obviously impossible for the most experienced anatomist to say, This is the territory which separates the morbid from the healthy portion of the brain? or for the physi-

lowed to go home on account of sickness or for domestic reasons.

"The testimony given by the fourteen experts covers every ground upon which insanity has been or can be claimed. As accumulated, it is an avalanche of proof against the assassin. It has been shown that he has none of the physical signs of insanity; in the shape of the skull, condition of the skin, tongue, or palate, appearance of the eye, habits of sleep, digestion, etc. It has been shown that if he is insane, he is an exception to all the intellectual manifestations seen in the experience of the most distinguished alienists. He has all the traits and symptoms which a man claiming his delusion ought not to have, and has none of the symptoms and traits which he ought to have. If he is insane, there must be a new classification of insanity, and Guiteauism must be given a place in the books with mania, melancholia, and dementia."

To this it may be added that Dr. Gray's testimony was emphatic, not only to the sanity of Guiteau, but to the non-existence of "moral insanity" as a distinct disease producing irresponsibility. See *infra*, § 657, for Guiteau's case in detail.

[1] Schürmayer, Gericht. Med. § 549; *supra*, § 58, etc.

cian to assert, such an extent of disorder of the mind is consistent with safety and responsibility, but beyond the boundary danger and irresponsibility commence?

"But, apart altogether from the metaphysical objection to the theory, let us for a moment consider whether such a form of disease as partial insanity or monomania comes under the observation of the practical physician. There are, undoubtedly, forms of insanity in which there is an unhealthy *predominance* and exaltation given to particular mental *impressions* or *delusions;* where certain states of morbid thought and feeling stand out in bold and prominent relief, giving, as it were, a character or type to the mental disease; *but I never yet saw a case of alienation of mind in which the delusion or hallucination was in reality confined to one or two ideas, those ideas exercising no influence over the conduct of the person, and not implicating, to a certain degree, the other faculties of the mind.* It is impossible to circumscribe the operation of morbid conditions of thought, or to draw a line of demarcation between those states of mind that are clearly under the influence of disease, and those operations or faculties of the intellect that remain apparently unaffected. A man believes himself to be our Saviour, or Mahomet the prophet. Apparently the man's mind is sound upon all other points; but within what limits can we confine and restrain the influence of so serious a delusion?

"A slight accession of bodily disease, a severe attack of indigestion, congestion of the liver, or a torpid state of the bowels, may make all the difference between security and safety in such a case. A person laboring under the dominion of one palpable insane delusion or hallucination (I am now using the term delusion in its strictly medical acceptation), ought not to be treated *quoad* the question of criminality as a sane and rational man. But let me for a minute revert to the question as to the existence of partial insanity, or monomania. Foville, a French physician of great celebrity, who had for many years the medical charge of the Charenton Lunatic Asylum near Paris, when speaking of monomania, observes: 'Monomania consists in a delirium, partial and circumscribed to a small number of objects. Monomania, in its most simple condition, is excessively rare; the number of patients who only rave on one subject is *infinitely small* compared to the number of those who are *called* monomaniacs. Under this head are often confounded all

those who have some habitual dominant idea. I have only seen two cases which rigorously merit the name, and these two even were affected from time to time with more extended delirium.'

"He again remarks: 'Let any one examine the hospitals of Paris, of Bicêtre, of Charenton, and he will see that amongst the thousands of insane, there is scarcely one true monomaniac, *perhaps not one.* Insanity attacks principally, at one time the intellectual, at another the moral or affective faculties; and, again, the sensations and movements. Each of these may be more or less affected than the others; and so, when the intellect, *without being unaffected*, is less deeply involved than the other faculties, we fall into the error of considering it sound, and call these monomaniacs. Indeed, it seems to me as though the descriptions of monomania had been written *upon the word*, and not from nature; that is to say, that writers have described what *might* merit the title of monomania, but of which they can find no instance in practice.'

"Moreau, also a great authority in France, says: 'It is impossible to admit that the intellectual faculties can be modified in a partial manner. In the slightest as well as the most severe forms of insanity, there is necessarily a complete metamorphosis—a radical and absolute transformation of all the mental powers of the ONE. In other words, we are insane or we are not insane; we cannot be half deranged or three-quarters, full face or profile.'

"Baillarger, an eminent French psychological physician, adopts the same view of the question, and maintains that the alleged monomaniacal idea is more frequently *predominant* than *exclusive.* If we look to Germany, we find the first psychological authority of that country, Damerow, declaring that 'he never knew a case of the disease of the mind called monomania, in which there was not a fundamental, general psychical disorder.'"[1]

And Mayo.

§ 554. Dr. Mayo thus speaks on the same point: "I may observe that the theory of either moral or impulsive insanity is too liable, for anything that Dr. Prichard has suggested, to occasion the sudden outbreaks of the brutal character—a character under rapid development, at present, in the lower orders of

[1] Dr. Forbes Winslow's Essay on the Legal Doctrine of Responsibility, reprinted in Am. Journal of Insanity, vol. xv. p. 173. See an article in 13 Bulletin Med. Leg. Soc., N. Y., 161.

the country—to find refuge under this plea. Such was the application of it which, some years ago, protected the Honorable Mr. Touchet from the penal consequences of a great crime. That gentleman put to death, by a pistol-shot, the marker of a shooting-gallery. The act was sudden, and there was no apparent motive; but it was not performed under any semblance of delirium. Mr. Touchet was eccentric, and he was *blasé*. He fancied that he desired to be hanged—at the gallows he would probably have thought differently—and he was reckless and brutal enough to give himself a chance of this fate, at the expense of the life of a fellow creature. I have noticed him since in the criminal department of Bedlam, *insouciant* and indifferent enough, but certainly not insane in any sense of the word that would not entirely disintegrate its meaning; neither when we proceed to consider the sense which the law intends to give to the expression of the certificate—'unsoundness'—shall we find this epithet at all more appropriate to Mr. Touchet's case, which was simply one of brutal recklessness. With respect to the misapplication of the plea of insanity to hysteria, we have the case of a nursery-maid, placed in Bethlehem Hospital in 1846. A trifling disappointment, relative to an article of dress, had produced in her a wayward state of mind. She labored, at the time, under diminished catamenia. An object to which she was generally much attached came in her way, namely, the infant whom she had nursed, and she destroyed it, as a fanciful child breaks, in its moodiness, a favorite doll. No fact more nearly approaching to delirium than the above was stated in exculpation or excuse at the trial. But Dr. Prichard's work, on the Different Forms of Insanity in relation to Jurisprudence, was published in 1842; and, by 1846, juries had learned to convert the uncontrolled influences of temper into what he terms Instinctive Insanity."

"As an instance of this class of cases in which the judicial authorities came rightly to a very different conclusion, I will quote to you the following one, from Sir Woodbine Parish's last work on Buenos Ayres. Having spoken of a certain wind occasional in that climate, which in some persons produces peculiar irritability and ill-humor almost amounting to a disorder of their moral faculties, he proceeds as follows: 'Some years ago, Juan Antonio Garcia, aged between thirty-five and forty, was executed for murder at Buenos Ayres. He was a person of some education, and rather remark-

able for the civility and amenity of his manners; his countenance open, his disposition generous. When this *vento-norte*—this peculiar north wind—set in, he appeared to lose all command over himself; and such became his irritability, that during its continuance he was engaged in continual quarrels and acts of violence. Before his execution, he admitted that it was the third man he had killed, besides being engaged in various fights with knives. When he arose from his bed in the morning, he told Sir Woodbine's informant, he was always aware at once of its accursed influence upon him; a dull headache first, and then a feeling of impatience at everything about him. If he went abroad his headache generally became worse; a heavy weight seemed to hang over his temples. He saw objects as it were through a cloud, and was hardly conscious where he went. He was fond of play, and if, in such a mood, a gambling house was in his way, he seldom resisted the temptation. Once there, a turn of ill luck would so irritate him, that he would probably insult some one of the bystanders; if he met with any one disposed to resent his abuse, they seldom parted without bloodshed. The relations of Garcia corroborated this account, and added that no sooner had the cause of excitement passed away, than he would deplore and endeavor to repair the effects of his infirmity. 'The medical man,' says Sir Woodbine, 'who gave me this account, attended him in his last moments, and expressed great anxiety to save his life, under the impression that he was hardly to be accounted a reasonable being.' 'But,' he adds, 'to have admitted that plea, would have led to the necessity of confining half the population of the city when the wind sets in.' I quite agree with the conclusion which this remark implies, as to the fate of Garcia. He was himself aware of the murderous instinct to which he was liable, and of its exciting causes. Surely, when such knowledge is in the possession of the delinquent, he must be made responsible for the non-avoidance of exciting causes."[1]

Analysis by Gray.

§ 555. It is further insisted, as a question of fact, that in the so-called cases of moral insanity, mental unsoundness can almost in every instance be shown to exist by positive proof. This is illustrated by an "analysis of fifty-two cases of insanity marked by a disposition to homicide," furnished to the

[1] Mayo on Medical Testimony in Lunacy, 58, 59, 60, 61, 62.

American Journal of Insanity, for October, 1857, by Dr. J. P. Gray.[1] From this the following summary is extracted:—

"*Sex.*—Of those who committed the act, nineteen were males and five females; of those who made unsuccessful attempts, twenty were males and five females.

"*Habits.*—Of the entire number (fifty-two) twenty-three were intemperate, or vicious, bad men, and twenty-nine were of unexceptionable character and habits.

"*Hereditary Predisposition.*—In twenty-one of the fifty-two cases there existed a marked hereditary predisposition, in nine no such predisposition existed, and in twenty-two no facts touching this point were ascertained.

"*Mental Disease.*—The form of mental disease was acute mania in fourteen cases, subacute mania in three, paroxysmal mania in two, chronic mania in four, dementia in twenty-four, melancholia in four, mania-a-potu in one. Four of the cases of mania and one of dementia were accompanied by epilepsy.

"*Time.*—Twenty-two of the twenty-four homicides were committed in the daytime, the remaining two in the early part of the evening. Of the twenty-five attempts, twenty-one were made in the daytime, two in the night, and two both in the day and night.

"*Object of Attack.*—A father was the victim in one case, a brother-in-law in one, a husband in one, wives in four, children in ten, a cousin in one, neighbors in four, neighbors' children in three, and entire strangers in seven cases. In nearly the same proportion the immediate relations of the patients were the objects of attack in those cases in which the attempt was unsuccessful.

"*Suicidal Disposition.*—In ten of the fifty-two cases a suicidal tendency accompanied the disposition to homicide.

"*Commitment to Asylum.*—Of the twenty-four homicides, eleven were acquitted by the courts before which they were arraigned, on ground of insanity, and ordered to the asylum; one was found guilty, but sentence was suspended; four were sent here on preliminary trial, six without any criminal proceedings; and two were placed in the asylum by their friends.

"*Results.*—Of the twenty-four patients who committed homicide, seven recovered, eleven are unimproved, two eloped, and four have

[1] See a similar article by the same author in 32 Am. Journ. Ins., pp. 1, 153.

died. Of the twenty-five patients who were prevented from carrying their homicidal purpose into execution, eight recovered, thirteen are unimproved, and four have died.

"Arranging these cases under Dr. Bucknill's very convenient modified classification of Esquirol, we have the following result:—

"1. 'Those wherein the crime has been occasioned by delusion, and no reasonable person can doubt or object to the irresponsibility of the offender.' In this class we have thirty-four of the fifty-two cases.

"2. 'Wherein the offender, though suffering from cerebro-mental disease, has committed the crime under the influence of some motive not of a delusive character.' In this class we have seven of the fifty-two cases.

"3. 'Where with general symptoms of cerebro-mental disease neither delusion nor motive for the crime is discernible.' In this class we have eleven of the fifty-two cases."

Criticism by Griesinger.

§ 556. Griesinger's eminence as an expert in this branch of science, no one can question. We may not fully accept the statement of Dr. Robertson and Dr. Rutherford, his English translators,[1] that "he is essentially the representative and the acknowledged leader of the modern German medical thought," for this, so far as the question of primacy goes, may be contested; but we cannot contest the position, that, as a careful and philosophic observer of mental phenomena, no modern authority surpasses him, either as to philosophic conception or sober accuracy of induction. On the subject before us, he thus speaks: "Before concluding the consideration of this subject it may be well to say a few words regarding the so-called *mania sine delirio*, a pathological variety established by Pinel, we may say, to the detriment of science; for so true and so serviceable was the remark which Pinel deduced from his observations, that the violent actions in mania are *not always* founded upon perversion of the ideas—we are of opinion now-a-days that originally this is altogether not the case—so confusing was it to give the same designation to two different morbid mental states; namely, on the one hand, to actual periodic attacks of fury with very little delirium, and, on the other hand, and principally, to those moderate states of mental ex-

[1] Sydenham ed., 1867.

altation referred to in the former paragraph, in which the patients perform foolish actions and show perversity of demeanor, but are also in a position to justify and to explain their conduct by a course of coherent reasoning which still lies within the bounds of possibility, *i. e.*, *folie raisonnante*. The disciples of Pinel have even ranged other states under the same title; for example, that condition which we have described as a moderate degree of melancholia with violence, and, more than this, even outbreaks of violence in consequence of hitherto concealed fixed ideas: for the latter there is not even the appearance of reason.

"If we consider more closely to which maniacal states the designation *mania sine delirio* can be applied, we recognize the fundamental fact that in no single case of mania is the conscious thought, the intelligence, perfectly free from any disorder.

"Even in the very slightest degrees of mania the intelligence participates in the general exaltation, though it be only to the extent of increased liveliness and rapidity of thought; generally, however, there is incoherence.

"In all attacks of fury, clear, calm, hearty thought is quite impossible. It is true that maniacs can occasionally, by means of exhortation, be brought for a short time to their senses, and be enabled to give correct answers; but this only shows, as Jessen remarked, the possibility of temporary remissions and intermissions; 'the patient is not delirious when he speaks sensibly, and he does not speak sensibly in those moments in which he is delirious.' Neither can we speak of the absence of delirium in those cases, which we have described, where there is a morbid impulse to commit acts of violence. Then those murderous ideas which are not at all in accordance with external moral causes, but awakened by a morbid disposition, are already in themselves delirious ideas, just as in furious mania and in all violent emotion—for example, rage—there arise new ideas, opinions, and conclusions, corresponding to the morbid disposition.

"Those states in which there is least confusion of ideas and delirious perceptions, in which there is the greatest amount of logical coherence in thought, are the slight states of exaltation which we have described in the foregoing paragraph, which, however, are generally merely the forerunners of the commencement of violent mania. For these, for *folie raisonnante*, we might, as

Pinel in part did, use the name *mania sine delirio;* but, as in concrete cases it is of little practical advantage to range cases under consideration under certain names, but of far more to obtain a psychological appreciation of the fundamental morbid psychical state, the circumstances which have caused its development and its consequences, it is, at all events, more advisable to allow those obscure names which provoke the curiosity of lawyers and other laymen to fall completely into disuse."[1]

By McFarland.

§ 557. "Truly unfortunate has it been for our professional speciality," remarks an experienced American psychological physician, Dr. McFarland, "that the term 'moral insanity' has ever had mention. The phrase itself is a luckless invention, not only liable to an infinitude of misconception, but conveying ideas calculated wholly to mislead. It is as if there was some separate kind of insanity, located in some 'terra incognita' which no man has yet discovered, wholly independent of the brain or any of its functions or operations. What is its seat or what are the organs of its abode or production, are questions which those who employ the term are themselves puzzled to answer.

"It does not seem to be considered by those who give currency to the expression that its whole idea implies another centre of sensations, emotions, or passions, than their great legitimate one, the brain. In the first place, it may seriously be questioned whether such a case as is usually described to set forth the idea, is ever actually seen. Experience brings before the mind a multitude of cases, not actually realizing the full idea, but which are close approximations to it. Now it is this close resemblance between cases which do exist and a certain ideal of disease borne in the imagination which leads us astray. The small difference which does exist between the case which every one has in hand and the ideal one, is always enough to destroy the value of the instance. It has always seemed as if all that is included in the idea of moral insanity might be better disposed of by a closer reference to phenomena of insanity which are of every-day occurrence. Every one realizes how few of the delusions of the insane mind are ever revealed, and how readily they are revealed under one set of circumstances and concealed under others. All insane asylums abound in cases of un-

[1] Griesinger on Mental Diseases. Syden. ed. (1867), § 140.

questionable mental disease, where its palpable manifestations are so slight that the unskilled observer would doubt its existence. A certain suspicious reserve, a mysterious shyness of manner, some haughtiness of bearing, or something marked and singular in gait, or tone of voice, some strange attachment to a particular seat, or special stress applied to the doing of some trivial act, may be all that distinguishes the individual from other men. Yet one guided by experience has no hesitation in declaring such cases to be instances of latent delusion; and is prepared for the sudden exhibition of extreme or violent acts of which any of these almost unobserved antecedent peculiarities furnishes the explanatory key. In such cases, the extent of the disease is not at all measured by what appears on the surface.

"The delusion which has possession of the mind may even have no outward form of manifestation whatever, that can be detected, and yet may give rise to all those singular, inexplicable, and perhaps violent acts, which a failure to explain by any anterior indications of delusion has styled moral insanity. It is very easy especially with those much conversant with the insane, to conceive a case possessing all the attributes assigned to the form of disease here called in question; but before admitting any such case as an existing fact, the possibility of a latent delusion underlying its characteristic perversities of conduct should be deeply considered."[1]

§ 558. Dr. Jules Falret, in an able paper read by him at a meeting of the Société Medico-Psychologique, in January, 1866, argued with great fulness and power to the same effect.[2] By Jules Falret.

From this paper we make the following extracts:—

"I shall only say that, for my part, I firmly believe, theoretically and practically, in the perfect unity of action of the various mental faculties, both in the sane and the insane. In reasoning or moral insanity clinical observation proves, in my opinion, that there may be a great excess of disorder in the moral and instinctive faculties, but that it is never entirely absent from the intelligence. Psychologists do not admit, in the healthy mind, the distinct existence of the several faculties, except as a convenience of study. These faculties

[1] American Journal of Insanity, April, 1863.

[2] See translation in 23 Amer. Journ. of Insanity, 406.

are then, in reality, only different modes of action of one indivisible mind. They can no more act separately in a state of health than they can be affected separately by disease. Several faculties always co-operate for the production of each one of our mental acts; and thus every one of these is a product of the simultaneous action of more than one of the primitive powers of the mind. So in disease, there may and often does exist a predominant lesion of a single faculty, but there is never an affection of one alone, the others being left entirely untouched.

"In Germany, the medical alienists of the first part of the century, such as Reil, Heinroth, Hoffbauer, etc., also sustained the reality of an insanity without delirium; but in 1822, Henke, the celebrated founder of the Journal of Legal Medicine, which is continued to the present time, began to question this prevalent doctrine. Since that period the contest among German physicians upon this capital question has been very animated; but, little by little, the opinion first maintained by Henke has finally triumphed, and it is to-day the dominant one in Germany.

"Professor Griesinger, in his Treatise on Mental Diseases, asserts, in effect, very distinctly, that there is no such thing as insanity without lesion of the understanding. He even goes so far as to say (p. 355), that the creation of *manie sans délire*, by Pinel, was a misfortune for science.

§ 559. "In France, in 1810, my father, in his thesis, commenced the reaction against the opinion of Pinel, by denying, absolutely, the existence of *manie sans délire*. Since then, Marc, Georget, and most of the disciples of Pinel, have sustained the doctrine of their masters, and the possibility of the separate lesion of the intellectual and instinctive faculties in insanity is yet generally admitted among us. Nevertheless, many medical alienists have begun to abandon this extreme position, and, for my part, I am convinced that the more rigorous and complete study of the facts now brought arbitrarily together under the name of *folie sans délire* will lead all conscientious observers to admit the correctness of that doctrine which is to me a demonstrated truth, namely, that there does not exist in mental disease an isolated lesion of the feelings, or of the instincts; in other words, that there is no such thing as *folie sans délire*." . . . . . .

§ 560. "It is very questionable," says one of the most eminent and experienced of American alienists, Dr. Joseph Workman,[1] "whether more injury than benefit has not been rendered to the interests of justice and humanity by the earnestness with which the moral insanity section have urged their views; or, perhaps, more correctly speaking, by the confusion which they have introduced into a subject requiring to be investigated with rigid philosophic exactitude."[2]

By Workman.

§ 561. It is also proper to mention that the theory of moral insanity, as such, was emphatically repudiated by the great body of the members of the Association of Medical Superintendents for the Insane, at the meeting in Washington on April 20th, 1866, reported in the American Journal of Insanity of that year.[3]

Repudiated by Association of Superintendents for the Insane.

§ 562. Dr. Liman's edition (1871) of Casper's Medical Jurisprudence is the highest contemporaneous medico-juridical authority in Prussia, if not throughout all Germany. In this work he repeatedly denounces the theory of an insanity exclusively moral as absurd, as repugnant to all sane psychology, as utterly without any inductive basis of fact, and as destructive of sound penal jurisprudence. To the same effect, he reports a series of decisions of governmental experts, being the most eminent men in their profession in the German states.

So by Liman.

§ 563. Dr. A. F. Berner, Professor of Jurisprudence in the University of Berlin, may be viewed as one of the most accurate and authoritative of German jurists in this department. In the fifth edition of his *Lehrbuch des Deutschen Strafrechts*, published in Leipzig, in 1871, he states the German law on this subject with great positiveness, and this is reaffirmed in 1877. "To constitute responsibility," he says,[4] "that is to say, penal accountability, it is necessary that there should exist, (1) consciousness of self; (2) consciousness of the exterior world; and (3) a developed consciousness of duty. In these incidents of intelligence inner freedom is involved; this freedom is not, therefore, to be proved independently

German law opposed to doctrine of "moral insanity."

[1] 19 Am. Journ. of Ins. 406.

[2] S. P. Review, by Dr. And. McFarland, ibid. 462.

[3] See also remarks of Dr. Chipley, *supra*, § 175, note (o[1]).

[4] § 77.

as a substantive essential of responsibility. A lunacy of the will (and thus a derangement of freedom) as coexisting with underanged intellect (*mania sine delirio*) is impossible."

Krafft-Ebing's tests for moral insanity.

§ 564. Dr. Krafft-Ebing, a German psychological physician of high eminence both for psychological acuteness and for great practical experience, was for years physician to the asylum at Illenau, in Baden, one of the largest and most admirable in Europe. In an essay in Friedreich's Blätter for September, 1871, this eminent writer distinguishes "moral insanity" from sane criminality, by the fact that the illegal act in the former is involuntary, springing from cerebral disease, while in the latter it is voluntary, the reason remaining unimpaired. "We have learned from experience," so he declares, "that immorality, ethical depravation, and criminal proclivities, may spring from physical as well as from moral grounds." "If we can perceive general signs of cerebral disease, and trace to this disease the distinguishing psychical symptoms, then we make out the distinction between a voluntary surrender to immoral inclinations, and an immoral criminal life, on the one side, and, on the other side, a state that is only apparently voluntary, but is really conditioned on organic causes." As tests of this cerebral disease, he gives the following:—

1. Either a diseased cerebral organization is congenital, or a serious cerebral disease is shown to have subsequently attacked the patient and produced change of character. In the former case the condition is one of moral idiocy. The latter is technically that of "moral insanity." The former is traceable to hereditary causes, to epilepsy, derangement, drunkenness in the parent. When the "moral" symptoms result from cerebral injury, they are apt to betray their progressive character in the prodromal stages of derangement—melancholy, incipient paralysis, hysterical and epileptical attacks. The close connection between the physical and the moral in this respect is shown by the fact that a diseased perversion of the moral feelings often follows attacks of mania, of epilepsy, of apoplexy, of meningitis, and of cerebral disease induced by mechanical injuries and by alcoholic excesses. In women, obstetrical causes operate in the same way.

2. In most cases there exist in the sphere of the nervous system other functional disturbances as well as physical deformities.

Among the latter may be noticed malformations of the skull, imperfections of the senses, deformities in the extremities (*e. g.* club-feet), strabismus, obstructions of the sexual organs.

3. Cerebral diseases, resulting from the peculiar cerebral organization above stated, are more common than with individuals normally constituted.

4. There is a peculiar tendency to congestion of the brain, and with this are coupled capricious and motiveless changes of disposition, morbid fixed prejudices, excessive irritability, and vehement transient passions.

5. There is a perceptible contraction of the scope of the intellectual renditions, approaching to actual imbecility, though this is less prominent from the conspicuousness of the moral deficiency in such patients, and their instinctive cunning and viciousness.

6. With these symptoms coexist anomalies of the natural passions, especially of the sexual instinct, which is developed in morbid precocity, and strikes out in directions which are perverse and foreign to natural life.

7. The organic basis of the disease (*which is only superficially of an exclusively ethical character*) exhibits itself in features which are progressive and entirely independent of outward circumstances; and in this form, certain immoral instincts, such as those for drink, stealing, and vagabondage, start to light sometimes with marked periodicity.

Hence, to constitute "moral insanity," it is necessary, according to this accomplished observer, that it should be the result of ascertainable cerebral disease. So far from the *mind* being sane, in this state, he emphatically argues that the contrary is the case. Insane ideas and delusions of the senses, it is true, may not exist; but he declares that it is impossible in the face of an exact clinical analysis, to maintain that the intellectual processes run an undisturbed course. In spite of the cunning and energy, he declares, with which such patients seek to carry out their abnormal instincts, they are "intellectually weak, unproductive, incapable of practical business or orderly activity, are marked by defective capacity for education, are one-sided and twisted in their mental action, and of very contracted judgment. In no case marked by this obtrusive moral debility, is there wanting some intellectual defect; and most patients of this class are intellectual imbeciles." "It is worthy of

notice," he continues, that in this disease "there is a peculiar disorder of the perceptive faculties, namely, in the process of reproduction, so that the reproduced representation is never identical with the original perception, though the patient holds it to be such. Hence, he appears ethically a liar, and exhibits his supposed experiences in an entirely distorted shape. . . Here it is that an abstract, a formal, intellectual knowledge of right and wrong, without ethical capacity for the same, intervenes. . . In persons of this class occur further formal disturbances of the perceptions—divergent processes of ideas, unique associations of ideas, peculiar fixed fancies, conceptions emanating from abnormal passions. That which in such persons stands out in marked peculiarity, and which can be traced only to intellectual defect, is their incapacity to distinguish not merely what is immoral, but that which is positively and unnaturally perverted, and the injury wrought by their own acts to themselves, coupled with their neglect, in their crimes, of the ordinary rules of prudence, and a want (notwithstanding many marks of mental subtlety) of every quality of self-control and self-guidance."

Convicts only rarely insane.

§ 565. It has been said that the rejection of "moral insanity," *mania sine delirio*, instinctive mania, etc., has led to the conviction of a number of persons who are really insane and irresponsible, but who, on the narrow tests adopted by the courts, are pronounced sane. This assertion, however, is unsupported by fact. In Prussia, "moral insanity," *mania sine delirio*, and instinctive mania, are repudiated not only by the courts, but by the eminent physicians who act as authorized medical experts. An examination of the reported cases down to 1872 will show that the tests applied emphatically exclude "insanity exclusively moral," and "irresistible impulse," from the category of legitimate defence. Now how is it with the persons so convicted? Have they, in any number, proved to be insane? The Berlin Criminal-Gefängniss records, between 1841 and 1870 (30 years), 189,167 prisoners. Among these only 148 are reported as insane. "In a great criminal prison," says Dr. Liman, commenting on this return, "which serves as the sewer of the Proletariat of a great city, and which receives very many old and previously convicted criminals, there is, therefore, on an average, only from three to five lunatics to ten thousand prisoners; and among all the reported sick-

nesses, from the slightest rheumatism upwards, were only three-tenths out of a hundred insane. This, so far from being an unfavorable proportion, is surprisingly favorable. We have here a proportion of lunatics to our population of criminals that does not materially differ from the proportion to the entire population. It is true the Stadtvoigtei (the prison referred to) is a prison of ordinary detention, and for convicts is not often permanently assigned. But even in the prisons with solitary confinement, so far as, in and out of Germany, I have obtained information of these institutions, I have found no marked increase of this proportion; and so far as concerns our great prison of this class, I can say distinctly that from its opening to the present day, a disproportionate number of lunatics has never been observed there, though it is a prison assigned only to those guilty of the more atrocious crimes."

§ 566. It is true that we have, as disputing these conclusions, two publications (1870), by Dr. J. Thomson, physician to the Scotch Central Penitentiary.[1] It is maintained by Dr. Thomson that the statistics of prisons show that crime is sometimes hereditary; that it descends coincidently with physical defects; that there is such a thing as an irreclaimable criminal class, and that in this class crime is largely mixed with insanity. He argues that in this class the moral sense is absolutely wanting; and as proof he cites (1) the frequent relapses of professional law-breakers; (2) the tendency of such persons to commit crimes when in prison; (3) their apparent incapacity for remorse, exhibited by their quiet sleep and their moral apathy, and (4) their inaccessibility to educational and reformatory influences. Their proclivity to insanity he seeks to show by their disposition to cerebral disorders; and he asserts that in the Scotch prisons the percentage of insanity is three times greater than obtains in the population at large. But the replies to this are obvious. As to percentage of insanity, the results are in conflict with those of the German statistics, which cover a far wider sphere, and are based on observations much more exact; and even if we take Dr. Thomson's returns as exhaustive, we must remember that unbridled passions have of themselves a tendency to produce insanity, and that this is an additional reason why passion, by education and penal discipline, should be placed under re-

[1] Journal of Mental Science, Jan. and Oct. 1870.

straint.[1] Nor should it be forgotten that among moral agents the power to do right implies the power to do wrong; that each successive indulgence of guilty passion makes the temptation to future indulgences stronger, and the restraints less; that the knowledge that character is lost by public conviction and disgrace removes one of the most important of such restraints. These considerations, therefore, instead of prompting to sentimentalize crime by treating it as a mere disease, should lead us to take even more stringent measures to prevent its commission. In other words, the very circumstance that crime generates crime, if not insanity, is an additional argument for penal laws which, while humane, shall be widely published and firmly executed.

To the charge of cruelty it may be well replied (1) that a lax view of crime, at a period when the character is forming, is apt to lead to those first and incipient offences, which, if the view here contested be correct, generate a sequence of other offences, each surpassing its predecessor in facility and obduracy; (2) that the alternative proposed by Dr. Thomson, of the indefinite incarceration of such offenders "during puberty,"[2] is at least as inhuman as the corrective and limited imprisonments that a due administration of justice awards; and (3) that if there be any cruelty in penal jurisprudence that is peculiarly reprehensible, it is that which treats any class of offenders as absolutely irreclaimable. Nor is this latter assumption founded on fact. Of course it is a well-known moral law, as has just been stated, that each repetition of crime makes reform more difficult. But the reports of the American prison discipline societies show that in proper conditions, where the convict, on discharge, is aided in his efforts to move into a new sphere where the disgrace of his convictions will not drag him down, reforms have been frequent.[3]

[1] See *supra*, §§ 115, 188, 403.

[2] See *supra*, § 187.

[3] "Madmen," says Mr. Stephen, in his authoritative work on English Criminal Law,[4] "in the present day, are treated with a degree of humanity and intrusted with an amount of freedom which were formerly quite unknown. . . Suppose they all know that any one of them might murder, ravish, or mutilate any other without the fear of punishment, the result would be that their liberty would have to be greatly restrained, and that they

[4] London, 1863, p. 96. See, also, articles by eminent physicians in this department in the North American Review for January, 1882.

II. SPECIAL "MORAL MONOMANIAS."

1. *At present repudiated.*

§ 567. "Moral insanity," as has just been seen, rests on the general assumption that the moral and the mental functions occupy separate and detached compartments, so that one can be insane without in any way affecting the other. The doctrine of special "moral monomanias" assumes a still further subdivision. Each particular moral instinct has its own subchamber, in which it dwells in like seclusion, so that insanity on its part not only does not affect the mental properties, but is not necessarily communicated to its own fellow instincts and affections. A man may thus have an insane and irresistible propensity to kill or to steal, for which he is irresponsible, though not merely his mind as a whole, but his remaining moral functions are sane.

Doctrine of special moral monomanias assumes a subdivision of "moral insanity."

§ 568. We have already noticed the conclusive psychological objections which apply to the "compartment" theory, so far as it assumes that the moral system can become insane while the mental is sane, and we have shown that the great weight of present medico-psychological authority is against this assumption. Of course, all reasoning against the general separation of "moral and mental" insanity applies *a fortiori* to the assumption that each particular "moral mania" dwells in non-contagious isolation in its own particular cell. One or two authorities, however, bearing on this particular point may now be added:—

This doctrine disproved by former reasoning.

§ 569. Ideler, a very eminent and experienced psychological physician,[1] thus emphatically speaks: "How can we pretend to separate the orbit of particular fixed ideas (or monomanias) from the entire sphere of mental action in such a way as to decide whether the origin of an unlawful purpose is within or without such orbit? Practically it is impossible for us to separate the diseased from the healthy portions of the

Additional authorities, Ideler.

would have to be treated on the footing, *not of moral agents to be governed by law, but of animals, to be governed by force.*"

[1] Lehrbuch, p. 254.

mind, so that the diseased portion should be punished, and the healthy declared irresponsible."

Krafft-Ebing.

§ 570. Dr. Krafft-Ebing, whose eminence as an observer has been noticed, in Holtzendorff's Encyclopedia (1871), a work of the highest juridical authority, under the title Wahnsinn[1] speaks as follows: "As part symptoms of general psychical disease, we may undoubtedly class morbid impulses to kill, steal, etc. These have been erroneously called monomanias, and the general condition of disease has been by this process ignored. *The doctrine of monomania is to-day rightly abandoned. It is based on the erroneous assumption that the psychical faculties are separate from each other, and capable of isolated action.*"[2]

Casper, Griesinger, and Liman.

§ 571. To the same conclusions Casper, Griesinger, and Liman, in the works already quoted, add their high authority. Indeed, as has been incidentally shown, and will presently be seen more fully, the doctrine of "moral monomania" is now left with scarcely a single authoritative adherent either in Germany, England, or France.

2. *Psychological absurdity of classification.*

Analysis should be subjective and not objective.

§ 572. In addition to the general objections already adduced to the doctrine of exclusively moral insanity, we may here naturally notice, when we are asked to enter on a still more minute division, how extraordinarily vague and fluctuating is the analysis which this new process involves. In the first place it takes, as the basis of analysis, not the subject, which is the individual man, but the *objects*, *e. g.*, houses to be burned, goods to be stolen, other men to be killed, to which the in-

[1] See *infra*, § 608.

[2] It is true that this distinguished observer afterwards speaks of the existence of a state which he thinks proper to call the "English moral insanity;" but it will be seen at once that the "moral insanity" he thus recognizes is very far from being the *mania sine delirio* of Pinel, or the insanity of irresistible impulse of later writers. For he gives, as its German rendering, "Sittlicher Blödsinn," or moral idiocy, and he enumerates, as its positive features, "comparative imbecility, with an entire absence of all moral and judicial feelings, a complete depravation of character with criminal immoral impulses and activities, which can easily be confounded with immorality, *from which, however, they are distinguished by their causes, their mode of growth, their progressive course, and the periodicity of certain symptoms.*"

dividual man, in this relation, may address himself. It is as if, when we were analyzing steam, we should speak of it under one name, and as possessing distinct properties, when it propels a boat, and under another name, and possessing other properties, when it propels a locomotive. If such a course should be taken, we would no doubt have a hundred different kinds of steam to talk about, and the dissimilarity of these various distinct powers might be the subjects of much subtle discrimination. But such a discussion would mislead us from the true issue. It would divert us from analyzing the properties of steam itself, which are invariable, no matter what may be the objects to which it may be turned, to investigating what are its special accidents, and to investing these accidents with a false autonomy. So it has been with the doctrine of moral monomania. The subject of the monomania is the monomaniac himself. "Is he insane?" This is a question for psychological and medical investigation. The *object*, the end to which this alleged insanity directs itself, is a matter for exclusively legal examination. "Did he do this thing?" "If so, supposing him to be sane, what is the punishment?" To decide this is the exclusive function of the courts of law.

Classification of the "moral insanity" theorists not harmonious.

§ 573. We have a right, also, to ask, when the "compartment" theory of monomanias is proposed to us, that the compartments in which these distinct functions dwell in such isolation that one may be insane without in any way affecting the others—that these compartments should be proved to be stable, fixed, and permanent. Instead of this, we find that they vary according to the views of each theorist. Pinel began by having a single insane chamber, and in this chamber, so well guarded that the inmates could not escape to disturb the "mind," dwelt what he called "*mania sine delirio*." Esquirol, improving on his master, declared that there exists, in like isolation, a "*manie instinctive*," which, issuing from its own separate apartment, can go forth, commit depredations on the outside world, and then furtively return, without in the least degree disturbing the equanimity, awakening the repugnance, or even exciting the attention of the mind's other inmates, which go on in their normal work with clearness and logical cohesion, not even taking notice of the extraordinary neighbor who is dwelling under their common roof. But French passion for classification could not be content

with this. It was soon argued that every wrong that can be perpetrated must have its own particular wrong-doer, and that this wrong-doer should have his particular exclusive and detached abode. It was at first thought that it be enough if there were separate apartments of this kind for certain general criminal propensities; and these were introduced to us under the titles of Kleptomania, Homicidal mania, Aidoiomania, Pyromania, etc. But it was soon found that this classification was not adequate. If each criminal act requires a distinct particular propensity, or "*manie instinctive*," and if each of these propensities is to be a separate factor, capable of executing its work without either implicating the mind as a whole, or even disturbing its fellow propensities, then the old theory of cerebral architecture must be declared imperfect, and we must be informed of a new plan, containing a largely increased number of separate chambers in which these insane factors (*instincts maladifs*) may abide in the requisite isolation. This was accordingly done, and as new crimes started up, new "monomanias" were recognized and duly assigned to separate abodes. Thus the Marquise de Brinvilliers, feeling an irresistible instinct to poison, and yet being admitted to be entirely sane, gave rise to a new "manie instinctive," called *Toxicomanie*, and which was announced to coexist not only with mental sanity, but with morality and amiability in everything except poisoning.

About the time when among French alienists the fashion of setting apart new varieties of monomanias was at the highest, arose the *Piqueurs*, who ranged the streets of Paris, cutting the clothes of women and inflicting other injuries; and forthwith this epidemic mischief was declared a "monomania." The "Piqueurs" were imitated by the "Mædchenschänders" of Augsburg, who, in 1820 and afterwards, infested the streets of that town, and would rush out from their lurking places, inflict a slight stab on young girls with some sharp instrument, and then retreat.[1] There is reason to believe that the chief offender in the latter performances was really insane; and such certainly was the case with the perpetrator of analogous outrages which some years since were committed in New York.[2]

[1] See *infra*, § 621.

[2] The case referred to is that of a young man, named Charles H. Sprague, who was tried in Kings County, New York, in October, 1849. He was shown to have left his house immediately after breakfast to go to his business, which was that of a printer; to have

This can hardly, however, be said of the "Zopfabschneiders" of 1858, who, in some of the towns of South Germany, amused them-

overtaken a young lady, to have thrown her down, to have snatched a shoe from one of her feet, and to have run away. She wore a chain and locket and other jewelry in sight; but he did not attempt to take anything except the shoe, nor to do violence to her person in any way. He then proceeded round a square, and on his way called at his wife's father's, and asked if his father was in town, a matter as to which he was perfectly well informed. He then left the house, came directly back to the very spot where he had just taken the shoe, and continued on, without stopping, to his place of business. He was tried for highway robbery, and on trial the defence of insanity was set up. "The principal witness was the defendant's father, a clergyman of the highest respectability, whose testimony was corroborated in every particular by several other witnesses; indeed, by all the court thought it worth while to have brought forward. *Charles Sprague's paternal great-grandfather, grandmother, great-uncle, and three great-aunts—being four out of a family of six—and a cousin, are or have been insane. He had himself in youth received several severe blows and falls upon the head, and within a year from the last fall he began to suffer headache, and his friends observed an unnatural prominence of the eye, with varying dulness and glassiness of these organs.* Simultaneously with this, Sprague began to exhibit a propensity to abstract and conceal the shoes of the female members of his family. In the majority of instances one shoe only was missed, and it was usually found about the house, having been thoroughly soaked with water, twisted up like a rope, and then hid away between a feather and straw bed, or in the depths of a trunk, or hung up in a closet with garments concealing it.

"Suspicion at first rested upon the servants, but the real agent, being detected and questioned, remained silent, and on subsequent explanations generally denied the possibility of his agency until within the last six years. During this period, when remonstrated with on his singular habit, he would admit that he must have taken the shoe, though he had no recollection of it, and did not know for what he wanted it. The intermissions in this practice have at no time exceeded three or four months at one time.

"After the practice became established, Sprague's mother and sisters, and the female servants, habitually locked up their shoes; yet occasionally one was missed and discovered twisted and crumpled after being wet. It was rumored at one time in the family that Sprague had attempted to remove the shoe from the foot of a domestic, and his sister once alarmed her father at night on finding him abstracting her shoes from a locked drawer. In the early part of the year of the trial, two females, one residing in Brooklyn, had a shoe or shoes taken from their feet while walking in the street in the evening, but the offender has never been certainly known."—(1 *Beck, Med. Jur.*, ed. of 1860, p. 732.) There was no monomania about this case. It was general insanity manifesting itself, among other ways, in this particular caprice. And the only proper discipline for such case, if general insanity existed, was that compulsory seclusion from society which general insanity requires.

selves by darting out in the dark on women who wore the long tresses of hair then in fashion, and cutting off and pocketing these tresses. These propensities were epidemic, and were declared by the perpetrators to be beyond repression when the fancy came on. It was soon, it is true, found that a little cudgelling caused the "propensity" to subside. It did not subside, however, until it had for a while been enfranchised as a "monomania," to the great disturbance of public decency and public peace.

Defects of classification.

§ 574. The disinclination felt by intelligent but depraved French-women to rear children—the "instinct" which leads them to destroy such children, has, even by so acute a physician as Boileau de Castelnau,[1] been set apart, under the title of *Misopedie*, as a distinct mania, capable, like other manias, of doing its work without implicating or embarrassing the mother herself, who is only an innocent victim of this mania, being in all other respects "amiable" and "sane." Nor does the process stop here. If the theory be right, there must be a constant readjustment of the cerebral system, so as to let in new duly authenticated and verified "monomanias." But if such readjustment be absurd, then the theory falls.

So the same destructive argument may be drawn from the inexhaustive capriciousness of the classifications which have been given by philosophers of this school. If we are to have a classification at all, we have a right to demand that it should be complete. Nor, we may well add, if each passion is to have an exclusive compartment to itself, in which it may become insane without affecting its neighbors, can we conceive why such an accommodation is refused to gluttony. Gluttony is as wide spread and eager a passion as are any of those which had been elevated to the rank of monomanias. The history of all nations, the rudest as well as the most cultivated, records its prowess. The African kings, described to us by Speke, who gorged to such an extent that they finally became too gross to move, are not more conspicuous illustrations of the powers of gluttony than was Cambacèrés, who spent half his life at the dinner table, and made the dinner table the supreme end of the state. Domitian, when Rome was needing the full wisdom and

[1] Annales medico-psychologiques, 1861, vii. p. 553.

energy of her sons, convoked the senate to determine how a turbot was to be cooked:—

> "But when was joy unmixed? no pot is found
> Capacious of the turbot's ample round:
> In this distress he calls the chiefs of state,
> At once the objects of his scorn and hate"—
> "The Emperor now the important question put,
> How say ye, Fathers, shall the fish be cut?"

Charles V. was in most respects a great contrast to Domitian. He was wise, tolerant, laborious, and inured to hardships when great public ends were to be achieved. Yet Charles V., in his retirement, would push aside the couriers who came to him from his son entreating advice, in order to consult with those who were to bring delicacies to the table; and shortened his life because, in defiance of his physician's advice, he would not shorten his meals. "A very considerable percentage of the miseries of mankind," says a late (1871) ingenious writer,[1] "may be said to spring from this source alone. Peevishness, ill-humor, domestic breezes, hypochondria, ghost-seeing, melancholy, suicide itself, with many other evils, may often be traced to the poor digestive sac, when wearied and insulted by the hard work to which it is condemned." Perhaps the reason why gluttony has not been spoken of as irresistible, and assigned to a place among the monomanias, is the varieties it assumes, and the consequent necessity of further subdivision. "Dipsomania" may be called a kind of gluttony, and if so would have to be deposed from its place as a monomania in chief. With it, but with separate compartments, would have to be ranked the passion for opium, and, if recent statements are to be relied on, the passion for chloroform. Nor could we admit these without assigning distinct phases to passions for distinct articles of food.

§ 575. A still more striking illustration of the inadequateness of this classification is to be found in its omission, among the alleged irresistible impulses, of that for *gaming*. Certainly if "pyromania," an impulse which at the best is occasional and rare, is to be recognized as a distinct insanity, requiring a distinct mental compartment, at least equal distinction should be assigned to the passion for gaming, a passion far more widely spread, and at least equally irresistible. Several instances are reported in French his-

[1] Hargreaves, Blunders of Vice and Folly, p. 24.

tory, of public men who in their early career gave promise of great political usefulness, who sacrificed everything to this passion, and became ultimately miserable outcasts. Nor is this peculiar to France. Mr. Fox, as remarkable for strong sense as he was for argumentative vigor, squandered, early in life, £154,000 given him by his father, on the gaming table, which he did not desert until his life was nearly spent; and such was his infatuation, that he gave up whist, in which his skill made him a winner in the long run, for hazard, in which he knew that in the long run he must lose. Sir John Bland and Lord Mountford, as Horace Walpole tell us, dissipated in gaming their entire estates, aud then committed suicide. The Marquis of Drogheda "ruined himself over and over again, till he was obliged to live on a small annuity paid quarterly. As soon as he received his money he lost it at the gaming table, and afterwards had to live in the greatest privation till quarter-day came again, when the allowance was dissipated in the same way." "A certain Captain H——, after losing a considerable sum, would walk up to a mirror, and begin a stormy colloquy with his image. The substance reminded the shadow of the resolutions he had made; he showered down abusive epithets upon himself, and became so excited that he would assume a menacing attitude and appear as if he were about to inflict chastisement upon the unfortunate reflection. This was done in a public saloon, and in the presence of a large company." "Sometimes the foolery of the gamester rises to a height which seems to be positively preternatural. There was once a person of the name of Shelton, of some note as a pugilist in his day, who indulged in betting at pitch and toss to such an extent, that one day, having lost all his earthly goods, he went on to stake his very life. He lost: will it be believed that the man cheerfully proceeded to a lamp-post and hung himself to the projecting bar?"[1] Cases of this character are not rare. Among civilized nations—putting aside, for the present, barbarous lands in which gaming often exercises an influence equally potent—we may assume that there are a thousand gambling houses, each with its body of frequenters, numbering from fifty to a hundred. We may take as favorable illustrations those places of better resort, where strict police regulations, and social restraint generated by the compara-

[1] Hargreaves, Blunders of Vice and Folly, London, 1871, p. 47.

tively high positition of the participants, maintain a superficial decorum. Yet, even under this mask, no one can visit these tables, without seeing that the habitual gamesters who frequent them form a distinct as well as a numerous class of men, far more numerous than "kleptomaniacs" or "pyromaniacs," and that they are driven from risk to risk by a frenzy which has at least as high claims to be considered irresistible as any which modern psychology has brought to light. They know that gaming in the long run will ruin them. They feel that the very process is consuming them by its fires, yet they persevere till ruin comes, and then give themselves up to the pauper's misery, or the suicide's grave. Why then is not the morbid passion for gaming announced as a "monomania"? What is there in it less vehement, less general, less marked, than the other "monomanias" which have hereafter to be noticed?

§ 576. If this classification is minute enough to give us "Toxicomanie" and "Misopedie," and to embrace "Piqueurs" and "Mædchenschänders," why does it find no place for gluttony and gaming? If it has no place for gluttony and gaming, what right has it to demand the recognition, as "monomanias," of other passions, certainly not more abnormal, or more pregnant with what are called "monomaniac" characteristics? And if the classification this theory presents be thus fluctuating and defective, what claims has the theory to judicial recognition?[1]

It may, indeed, scarcely need so copious a recapitulation as the above to show that the theory of special "moral monomanias" is not only unphilosophical but impracticable. But in view of the persistency with which this view is still pressed on the courts, it is important to show that, even if the position is true as theory, it is false in practice. And then, if it appear that even in the most comprehensive classifications, there remain a number of passions and impulses without their necessary exclusive abodes; if it also appear that these abodes, even when designated, instead of having permanent inmates, are occupied capriciously by a series of visitors,

[1] The following new manias may be here noticed: *Agoraphobia*, 19 Journ. Ment. Sci. 456; *Metaphysical* mania, see 23 Journ. Ment. Sci. 608; *Ambitious* mania, 18 *id.* 431. At a meeting of the German Verein and physicians at Nuremburg in 1877, a new primary form of insanity was recognized, called *Walmsinn*. See the Psychiatr. Centralblatt, Oct. and Dec. 1877, and an article on Necrophilism in 20 Journ. Ment. Sci. 551.

appearing from time to time with new names and new attributes—this throws just discredit on the theory as a theory. If we can establish the entire isolation of the instincts in question, then we can conceive of one being insane without affecting the other. But when we find, that, so far from such isolation being established, these instincts cannot even be separately numbered, then their separate existence must be regarded as unproved.[1]

III. PROMINENT FORMS OF SUPPOSED MONOMANIA.

§ 577. It remains to notice the more prominent forms of supposed monomania. They will be grouped under the following heads, not because they have any psychological basis as

Forms of monomania

[1] "The gravity of this question does not diminish when we consider the fact that the alleged insane class is increasing out of all proportion to the general increase of the population of the country; and with this increase of the insane comes a more liberal definition of insanity every year, constantly growing wider and wider, until persons who were formerly considered perfectly sane are now most hospitably taken within the fold of the irresponsible, and assigned to a ward or class in the vast nomenclature or nosology of modern insanity—classes and divisions numerous enough and wide enough to embrace the entire human family, sane and insane. We find in the 'moral' department alone divisions, subdivisions, and double subdivisions as extensive as the propensity of the human family to commit crime, to wit: homicidal mania, kleptomania, oikeiomania, suicidal mania, fanatico-mania, politico-mania, etc. etc., without end. To the old and constantly increasing nomenclature of insanity of the books there has lately been added another, covering the loss of memory. To escape being classed with the insane, one must have a good memory. Whether he must come up to the high standard of Macaulay, who could recite the 'Times' newspaper, advertisements, and all, after reading it; or of Niebuhr, who restored from memory a burnt book of public accounts; or of Leibnitz, who could repeat from memory the whole of the Æneid, we are not told. The 'London Lancet,' from which we have already quoted, says on this subject: 'At the present moment, insanity would seem to be anything experts choose to make it. There is no clearly formulated idea of sanity, and the least 'strangeness' or weakness is held to be, if the general circumstances appear to render the assumption convenient, a sufficient proof of insanity to deprive an individual of his liberty and social privileges.' (The learned editor might have added with equal truth, 'or make him irresponsible for murder.') The 'Lancet' continues: 'A master in lunacy has just ruled that loss of memory is to be regarded as evidence of insanity, although at least one experienced expert medical practitioner—not a specialist—had no hesitation in declaring that the patient, or, as we would prefer to say, victim, was not insane.'"—Dr. Elwell, in North Am. Rev., Jan. 1882, p. 8.

distinct manias, but simply because, as incidents of general insanity, it is convenient to view them in this order.

1. "*Homicidal mania*" (morbid propensity to kill).
2. "*Kleptomania*" (morbid propensity to steal).
3. "*Pyromania*" (morbid incendiary propensity).
4. "*Erotomania*" (morbid sexual propensity).
5. "*Pseudonomania*" (morbid lying propensity).
6. "*Oikeiomania*" (morbid state of domestic affections).
7. "*Suicidal mania*" (morbid propensity to self-destruction).
8. "*Dipsomania*" (morbid propensity for drink).
9. "*Fanatico-mania*" (morbid state of the religious feelings).
10. "*Politico-mania*" (morbid state of political feeling).

1. *Homicidal monomania.*

§ 578. "*Homicidal monomania*"[1] is not to be confounded, according to Marc, with the sudden murderous impulse with which madmen are occasionally seized under the influence of revenge, or of some other passion which controls them; and it is, in like manner, important to distinguish it from delirium. Esquirol understands the term to mean a partial insanity, distinguished by more or less violent cravings of a murderous nature; and subdivides it into— Its destructive features.

a. Cases in which the murder is caused by a firm but insane conviction—the monomaniac being carried away by an avowed but irrational motive, and always manifesting conclusive signs of a partial insanity of the understanding or the feelings.

b. Cases in which the monomaniac displays no perceptible disturbance of the understanding or the feelings, but is carried away by a blind instinct, by an *inexplicable something*, which impels him to the commission of murder. As, however, is very pertinently remarked by Schürmayer, the distinctions and definitions by Marc and Esquirol do not advance us in the field of forensic psychology a single step beyond what we had already reached by means of the physiology of insanity in general; while their assumed homicidal monomania falls, on the one hand, into the well-known rank of

[1] Siebold's Gericht. Med. § 219; Hoffbaur's Psychologie, § 122; Conradi's Commentatio der mania sine delirio, Gott. 1827, 4; Conradi's Beitrag zur Geschichte der Manie sine delirio, Gott. 1835; Artikel Mania sine delirio, in Jesse's Encyclop. Wörterb. der Med. Wissench. Bd. 22, Berlin, 1840, p. 410.

mania, and is easily recognized and considered as one of its accidental manifestations, or, on the other hand, draws into the circle of its definition *every* murder of which the author is in a condition to assert, that he was compelled to commit it by an impulse which he found to actuate him.[1]

Approved by Ray.

§ 579. Dr. Ray, among all Anglo-American authorities, gives this species of mania the widest sweep. "It was first distinctly described by Pinel," he says, "and, though its existence as a distinct form of monomania was for a long time after doubted, it has subsequently been admitted by the principal writers on insanity—by Gall and Spurzheim, Esquirol, Georget, Marc, Andral, Orfila, and Broussais, in France; by Connelly, Combe, and Prichard, in England; by Hoffbauer, Platner, Ettmuller, Henke, and Friedreich, in Germany; by Otto, of Copenhagen; and by Rush, in this country. It has received the various appellations of *monomanie homicide*, *monomanie meurtrière*, *melancholie homicide*, *homicidal insanity*, *instinctive monomania*. Esquirol, in his valuable memoir, first published in the shape of a note in the French translation of Hoffbauer's work, observes, that homicidal insanity, or *monomanie homicide*, as he terms it, presents two distinct forms, in one of which the monomaniac is always influenced by avowed motives more or less irrational, and is generally regarded as mad; in the other, there are no motives acknowledged, nor to be discerned, the individual being impelled by a blind, irresistible impulse. It is with the latter only we are concerned, for the other is clearly a form of partial intellectual mania; but as this division has not been strictly made by nature, cases often occurring that do not clearly come under either category, the subject will be better elucidated by noticing all the forms of this affection, and seeing how intimately they are connected together."

[1] See *supra*, §§ 146–162, 163–189. See an interesting treatise by Dr. Woodward, 1 Am. Journ. of Ins. 322. See also People *v.* Kleim, reported 2 Am. Journ. of Ins. 245; Abner Baker's Case Reviewed, 3 ibid. 26; Trial of Rabello, reported, ibid. 41; an Essay, by Dr. Aubanel, on the same point, ibid. 107; Report of Trial of People *v.* Griffin, ibid. 227; People *v.* Sprague, 6 ibid. 254; Com. *v.* Furbush, 9 ibid. 151. For an interesting though desultory sketch of the law, see Mr. Warren's Remarks on Oxford's and McNaughten's cases, 7 Am. Journ. of Ins. 318; Black. Mag. for Nov. 1850.

§ 580. The same distinguished authority suggests the following tests:—

Tests suggested by him.

I. In nearly all, the criminal act has been preceded either by some well-marked disturbance of the health, originating in the head, digestive system, or uterus, or by an irritable, gloomy, dejected or melancholy state; in short, by many of the symptoms of the incubation of mania. The absence of particulars in some of the cases we find recorded leaves us in doubt how general this change really is; but a careful examination would, no doubt, often, if not always, show its existence where, *apparently*, it has never taken place.

II. The impulse to destroy is powerfully excited by the sight of murderous weapons, by favorable opportunities of accomplishing the act, by contradiction, disgust, or some other equally trivial and even imaginary circumstance.

III. The victims of the homicidal monomaniac are mostly either entirely unknown or indifferent to him, or they are among his most loved and cherished objects; and it is remarkable how often they are children, and especially so, his own offspring.

IV. While the greater number deplore the terrible propensity by which they are controlled, and beg to be subjected to restraint, a few diligently conceal it, or, if they avow it, declare their murderous designs, and form divers schemes for putting them in execution, testifying no sentiment of remorse or grief.

V. The most of them, having gratified their propensity to kill, voluntarily confess the act, and quietly give themselves up to the proper authorities; a very few only—and these, to an intelligent observer, show the strongest indications of insanity—fly, and persist in denying the act.

VI. While the criminal act itself is, in some instances, the only indication of insanity—the individual appearing rational, as far as can be learned, both before and after the act—in others it is followed or preceded, or both, by strange behavior, if not open and decided insanity.

VII. Some plead insanity in defence of their conduct, or an entire ignorance of what they did; others deny that they labor under any such condition, and, at most, acknowledge only a perturbation of mind.

The following are the indicia given by Taylor:—

1. The acts of homicide have generally been preceded by other striking *peculiarities of conduct* in the individual, often by a total change of character.

2. They have in many instances, previously or subsequently, attempted *suicide*—they have expressed a wish to die or to be executed as criminals.

Supposed instances of homicidal mania.

§ 581. As an illustration of the erroneous induction on which the doctrine of monomania rests, may be mentioned the case of a man tried in 1869 for a murder in Alton, England. He had enticed a little girl into a garden, where he at once killed her, cut her in pieces, scattering the fragments in different places; washed his hands publicly by the roadside; went quietly home, when he wrote in his journal, "killed a little girl; it was fine and hot," and then confessed to the officers who apprehended him what he had done, giving no reason, and speaking of it as an indifferent event.[1] Now the very essence of homicidal mania, as insanity exclusively moral, is that the reason is supposed to be intact. But how was it in this case? (1) The defendant exposed himself unnecessarily, without motive, without precaution as to concealment, to the most terrible punishment the law can inflict. (2) He viewed an act which to the eye of reason would be the most tragic and revolting with as much indifference as he would pulling up a plant or killing a fly. (3) It was in evidence that his father had labored under acute mania; that one of his near relatives was at the time confined as a lunatic, and that he himself had been so peculiar and liable to depression that he had been from time to time watched to keep him from suicide. Under such circumstances it is scarcely accurate for Dr. Maudsley to say that "he was not insane in the legal or the ordinary sense of the term," and to treat the case as supporting the theory of homicidal mania, as distinguished from legal insanity. On the facts above stated, if there were no countervailing evidence, neither judge nor psychologist would pronounce the patient to have been possessed at the time of the act of right reason.

§ 582. To the same effect is a case which occurred in New England, in 1868, which has also been claimed to prove distinctive

[1] See Maudsley's Body and Mind, p. 71.

moral insanity. A gentleman of the greatest amiability and the tenderest family affections, after having labored for several days under depression, arose from his bed about midnight, killed one of his children with a razor, and was attacking another, when he was arrested by his wife. He fled trembling and almost naked into the road; and was discovered early the next morning, conscious of the terrible nature of his act; conscious that it was a crime against the law as well as a terrible grief to himself; but believing it was necessary to rescue from great undefined calamity the very children whom he had attacked. Certainly there was here a turmoil and frenzy of the reasoning powers more signal as well as more awful than that of the fatuous idiocy which is incapable of determining right from wrong. Nor was the moral sense destroyed or perceptibly deranged, for there was the acutest anguish exhibited, and the kneenest perception of the enormity of the act. But there was such a wreck of the reasoning powers that the act, fearful and hateful as it was, appeared to the perpetrator necessary. It was a case of acute hypochondria involving derangement of the *mind*.[1]

§ 583. Dr. Maudsley, while maintaining the distinctiveness of this phase of insanity, attributes it, not to insulated moral derangement, but to neuropathic disease. "Those who have practical experience of insanity,[2] know well that there is a most distressing form of the disease, in which a desperate impulse to commit suicide or homicide overpowers and takes prisoner the reason. The terrible impulse is deplored sometimes by him who suffers from it as deeply as by any one who witnesses it; it causes him unspeakable distress; he is fully conscious of its nature, and struggles in vain against it; his reason is no further affected then in having lost power to control, or having become the slave of the morbid and convulsive impulse. It may be that this form of derangement does sometimes occur when there is no hereditary predisposition to insanity, *but there is no doubt that in the great majority of cases there is such a neuropathic state.* The impulse is truly a convulsive idea, *springing from a morbid*

Dr. Maudsley maintains that this mania is distinctive.

[1] See *supra*, §§ 155, 529; *infra*, § 636; and cases in Appendix to 3d ed. of this work, §§ 838, 839, 842.

[2] Body and Mind, an Inquiry into their Mutual Connection, etc., being the Gulstonian Lectures for 1870, by Henry Maudsley, M.D. London, 1870, p. 73. To the same effect is Maudsley's "Responsibility in Mental Disease," 1874.

condition of nerve element, and it is strictly comparable with an epileptic convulsion. How grossly unjust, then, the judicial criterion of responsibility which dooms an insane person of this class to death if he knew what he was doing when he committed a murder! It were as reasonable to hang a man for not stopping by an act of will a convulsion of which he was conscious. An interesting circumstance in connection with this morbid impulse is that *its convulsive activity is sometimes preceded by a feeling very like the* aura epileptica, *a strange morbid sensation, beginning in some part of the body, and rising gradually to the brain.* The patient may accordingly give warning of the impending attack in some instances, and in one case was calmed by having his thumbs loosely tied together by a ribbon when the forewarning occurred. Dr. Skae records an instructive example in one of his annual reports. The feeling began at the toes, rose gradually to the chest, producing a sense of faintness and constriction, and then to the head, producing a momentary loss of consciousness. *This aura was accompanied by an involuntary jerking, first of the legs and then of the arms. It was when these attacks came on that the patient felt impelled to commit some act of violence against himself or others.* On one occasion he attempted to commit suicide by throwing himself into the water; more often the impulse was to attack others. He deplored his condition, of which he spoke with great intelligence, giving all the details of his past history and feelings. In other cases, a feeling of vertigo, a trembling, and a vague dread of something fearful about to happen, resembling the vertigo and momentary vague despair of one variety of the epileptic aura, precede the attack."

§ 584. When the cases sketched by Dr. Maudsley, however, are examined, it will be seen that they present certain positive features which distinguish them from insanity which is described as exclusively "moral," and which the courts have declined to recognize. Dr. Maudsley tells us (1) that the patient, in such cases, is in a "neuropathic state," which is a state of positive physical disease; (2) that this state "is strictly comparable with an epileptic convulsion;" (3) that it is sometimes *preceded* by a feeling "very like the *aura epileptica;* and (4) that it is often the result of hereditary insanity." Now the act, alleged to be criminal, may be viewed as without a cause, or as being caused by an intelligent

volition, or as being caused by material and physical compulsion.[1] If the latter be proved to exist, whether the compulsion was internal or external, the actor is not morally responsible. Disease, especially convulsive disease, may be such compulsion; but, if so, it must be affirmatively proved. The tests propounded by Dr. Maudsley go far to constitute such proof. Of course, when a man is put on trial for a criminal act, the presumption is that he committed such act voluntarily. But this presumption may be overcome, and physical coercion shown, by proof such as that which Dr. Maudsley suggests, coupled, when it can be, by evidence of the unnaturalness and motivelessness of the act.

§ 585. In Sir Henry Holland's "Recollections,"[2] the following anecdote is given: "In 1825, as I think, when he (Canning) was foreign secretary and living at Gloucester Lodge, I was one morning called in haste to see a patient at Brompton. Scarcely had I entered the room of this gentleman (for such he was, and had filled a diplomatic office of some consideration) when he eagerly besought me to protect him against himself. He told me that a propensity to kill Mr. Canning had come upon him suddenly, and so strongly, that he had taken these rooms at Brompton to be in the way of satisfying the impulse. But against this insane will (*induced by some supposed official injustice*) *a sounder feeling was struggling within him, and for the moment gained mastery enough to lead him to seek for instant restraint.* I, of course, lost no time in providing it; warning Mr. Canning meanwhile to return to Gloucester Lodge by a different road. These strange cases of what may be called *duplicity* of the will are not rare in the long catalogue of mental infirmities. *In lighter and less critical form such incongruities enter into the most familiar moods of character and acts of life; but even here they need to be self-recognized and resisted, to prevent their gaining mastery over the mind. The consistent and firm command over the will ranks amongst the higher attainments of man.*"

Such "manias" not irresistible.

In this case we have two distinct factors which are among the

[1] See *supra*, §§ 146–162.

[2] Recollections of Past Life. By Sir Henry Holland, Bart., M.D., F.R.S., D.C.L., etc. etc., President of the Royal Institution of Great Britain, Physician in Ordinary to the Queen. London: Longmans and Co., 1872.

most constant incidents of criminal responsibility: (1) the motive of *malice*, *i. e.*, revenge for "some supposed official injustice;" (2) the capacity of mastering this feeling, so as to prevent it from taking effect in an overt act. Of course, if in such a case the mind becomes insane and reason is dethroned, and if when in such a state the homicidal impulse becomes irresistible, then, according to the rules laid down in prior sections,[1] a legal defence is made out. But all this is in subordination to the principle stated by Sir H. Holland, that these "propensities" must be "self-recognized and resisted to prevent their gaining mastery over the mind." To declare that they constitute irresponsibility, and that they are in the eye of the law irresistible, is for the law to abdicate one of its highest offices, that of educating men to resist such passions before they reach such a height as to be really irresistible.[2]

§ 586. To recur to the classification foreshadowed by Sir W. Hamilton, and expressed by Mr. Bain,[3] the mind may be viewed as combining three distinct but mutually dependent factors—feeling, will or volition, and thought or intellect. Disease either of feeling or thought is a disease of the mind as an entirety. Thus if *feeling* be in such a diseased state as to generate delusions or hallucinations, the conclusions which thought draws from such data are insane. So if thought is so diseased that the patient, from want of memory or want of power of comparison, is incapable of determining the actual relation to himself of the instrument by which his feeling is excited, then the consequent volition is insane. These points may be illustrated as follows:—

Mania, if existing at all, is general, not special.

§ 587. Anger,[4] as Aristotle points out, is an impulse, arising

[1] *Supra*, §§ 146–162.

[2] See *supra*, §§ 115, 188, 403. "Pure uncontrollable impulse is also a source of crime among the insane, especially of suicide, homicide, theft, and arson. In certain forms of mental disease, the sudden impulse to kill one's self or another, without any motive or deliberation or delusion, is at times quite beyond control; but it is often controlled even in very insane persons, as in the case of a patient in an asylum with mania, who threw his knife and fork violently out of the window so as to lose the opportunity of the crime to which he had a strong impulse—to kill the physician just entering his room. This feeling may be so strong, even toward a tenderly loved child, that the mother, if otherwise rational enough, begs to be kept out of its sight."—Dr. Folsom, in North Am. Rev. for Jan. 1882, p. 39.

[3] See *supra*, § 307 *a*.

[4] See *supra*, § 418.

from pain to ourselves, to put somebody else to pain. It is universal in the human breast; to invest it with irresponsibility would be to confer irresponsibility on all crime. As analyzed by Mr. Bain,[1] it contains these ingredients: (1) In a state of frenzied excitement, some *effect* is sought to give vent to the activity; (2) The sight of *bodily affliction and suffering* seems to be a mode of sensuous and sensual pleasure; (3) The pleasure of *power* is pandered to; (4) There is a satisfaction in preventing further pain to ourselves by *inducing fear* of us, or of consequences, in any one manifesting harmful purposes. Of these (1) and (2) may be regarded as the instinctive working of anger; the latter as the result of feeling mingled with thought.

Assuming, then, the universality of anger as a human emotion, its action, in insanity, is as follows: A blow is received, and the sufferer tries to hurt the thing producing the hurt. An infant, for instance, strikes in anger the floor on which he falls. The imbecile dashes his medicine to the ground. The maniac strikes about him in blind frenzy. Here there is no criminal responsibility, in the common sense, for the outburst of anger, though it is proper that one whose feelings are under such slight restraint should be kept under tutelage.

§ 588. On the other hand, illusions or hallucinations may exist, which, to a patient capable of reasoning correctly, may make the indulgence in anger seem just. Such a patient, for instance, may believe himself in danger of his own life, or may conceive that he is a soldier in the heat of battle, or may think that the person whom he strikes is a tree or an image. In this case also there is no criminal responsibility, though abundant ground for disciplinary confinement.

No defence where reason exists.

But anger can never be viewed as insanity in such a way as to constitute it a defence, unless the intellect be proved to be disturbed in the modes above specified. Or, to state the proposition in other words, anger—or destructive impulse of any phase—cannot, psychologically or ethically, be an excuse for crime, as long as reason exists, by which it can be controlled.[2]

[1] Mental and Moral Science, London, 1868, p. 262.

[2] See *supra*, §§ 146–162, 188, 403.

§ 589. Viewing the question of "homicidal insanity," therefore, on its psychological side, we come to the conclusion that unless the *mind* be insane, there can be no separate insanity of the moral system having this distinct type. Viewing the question ethically, we must conclude that no such alleged impulse should be an excuse for crime while there is reason in the offender adapted to the control of the impulse. This brings psychological and ethical science in this respect in accord with juridical.[1] At the same time it must never be forgotten that there are forms of insanity—*e. g.*, melancholia—of which the homicidal propensity, especially in the killing of children and objects of particular love, is a natural outgrowth. How far such substratum of insanity may be *occult*, and how far it may burst out exceptionally as *mania transitoria*, will be considered under other heads.[2]

2. "*Kleptomania*"[3] (*morbid propensity to steal*).

[*For important medico-juridical opinions on cases of alleged "Kleptomania," see Appendices, §§ 843, 844, to third edition of this work.*][4]

§ 590. A propensity to steal occurs not unfrequently as a symptom in mania, and the mental confusion incidental to it, and in depression and delirium. In such cases the disease is readily detected. But where it occurs in cases of concealed insanity, its discovery is not easy. From Ellinger we adapt the following:—

Analysis by Ellinger.

1. In the earlier developments of mania this is an important symptom; it will, however, be found accompanied, more or less, by other symptoms of incipient derangement, such as a general alteration in the accustomed mode of feeling, thinking, occupation, and life of the individual, a disposition to scold, dispute, and quarrel, to drink, and to wander about busily doing nothing, and the bodily signs of excitement (restlessness, want of sleep, rapid pulse, etc.).

[1] See *supra*, §§ 146, 162, 163–189, 403.

[2] See *infra*, §§ 706–710.

[3] See Méd. Lég., M. Orfila, tome i. p. 364, Paris, 1848; Etudes Cliniques des Maladies Mentales, M. Morel, tome i. p. 319, Paris, 1854.

[4] See also a case rep. Am. Journ. Ins., No. 254.

2. The abnormal tendency continues after the disease, to all external appearance, has ceased. This continuance, however, shows that mental disease, though latent, still exists. (This calls for a continued course of observation by the examining physician.)

3. There are distinct but occult hallucinations at work. These are to be assumed the more readily, the more bizarre and exclusive is the desire to steal, and the more the objects to which it is confined are out of proportion to the property of the thief; and particular attention should be paid to the existence, present or past, of other symptoms of insanity.

4. Automatic impulses, such as the cravings of pregnant women, may actuate the perpetrators; and the degree of mental lesion may be inferred from the extent to which the moral nature revolts at and abhors the deed. The same inference is deducible from the slightness and grotesqueness of the peculations, and the degree in which other morbid symptoms are apparent in the body and the mind when the deed is committed.

§ 591. Dr. Rush, whose speculative mind seized readily on the then novel distinctions which the French alienists of his day were propounding, was the first American authority to claim insularity for this propensity. "There are persons," he said, "who are moral to the highest degree as to certain duties, but who, nevertheless, live under the influence of some one vice. In one instance, a woman was exemplary in her obedience to every command of the moral law, except one—she could not refrain from stealing. What made this vice more remarkable was that she was in easy circumstances, and not addicted to extravagance in anything. Such was the propensity to this vice, that when she could lay her hands on nothing more valuable, she would often at the table of a friend fill her pockets secretly with bread. She both confessed and lamented her crime." "Cases like this," so argues Dr. Ray, "are so common, that they must have come within the personal knowledge of every reader who has seen much of the world, so that it will be unnecessary to mention them more particularly. It would be difficult to prove directly that this propensity, continuing as it does throughout a whole life and in a state of apparently perfect health, is, notwithstanding, a consequence of diseased or abnormal action in the brain, but the presumptive evi- Illustrations.

dence in favor of this explanation is certainly strong. First, it is very often observed in abnormal conformations of the head, and accompanied by an imbecile condition of the understanding. Gall and Spurzheim saw in the prison of Berne a boy, twelve years old, who could never refrain from stealing. He is described as 'ill-organized and rickety.' At Hainau they were shown an obstinate robber whom no corporal punishment could correct. He appeared about sixteen years of age, though he was in fact twenty-six; his head was round, and about the size of a child's one year old. He was also deaf and dumb, a common accompaniment of mental imbecility. An instructive case has been lately recorded, in which this propensity seemed to be the result of a rickety and scrofulous constitution. Secondly, this propensity to steal is not unfrequently observed in undoubted mania. Pinel says it is a matter of common observation that some maniacs, who, in their lucid intervals, are justly considered models of probity, cannot refrain from stealing and cheating during the paroxysm. Gall mentions the case of two citizens of Vienna, who, on becoming insane, were distinguished in the hospital for an extraordinary propensity to steal, though previously they had lived irreproachable lives. They wandered over the house from morning to night, picking up whatever they could lay their hands upon—straw, rags, clothes, wood, etc.—which they carefully concealed in their room."[1]

No defence when reason continues.

§ 592. How frequently the illustrations just mentioned have done service to establish this mania will be presently noticed.[2] It is sufficient at present to invoke for their disposal the principle heretofore abundantly vindicated, that in all cases where the *mind* is sane it is the duty of the state, by education and penal discipline, to establish sane morality.[3]

Proof cases indicate general insanity.

§ 593. Yet, when we analyze the cases adduced of this alleged "mania," we cannot fail to see how many of them are attributable to ascertained mental disease. This is eminently the case with epileptics. Dr. Erhardt[4] enumerates many cases where these unhappy sufferers have been possessed with irrepressible desires to appropriate to them-

[1] Ray on insanity, 189, 190, 191; see *ante*, § 106.

[2] *Infra*, note 2, p. 489.

[3] See *supra*, §§ 115–188, 403, 495.

[4] Ueber Zurechungsfähigkeit der Epileptischen.

selves whatever they could secretly lay their hands on, valuable or not. And generally with regard to the moral responsibility of epileptics, it is important to observe, says the same judicious author, that even after attacks have been for months suspended, the mind is in a condition of disorganization which should properly divert from it the application of those severe rules which apply to minds perfectly sound.[1] The same criticism may be applied to other cases cited by Gall, of women who, when pregnant, were violently impelled to steal, though perfectly upright at other times. Friedreich gives the case of a pregnant woman who, otherwise perfectly honest and respectable, suddenly conceived a violent longing for some apples from a particular orchard, two or three miles distant. Notwithstanding the entreaties of her parents and husband not to risk her character and health, and their promises to procure the apples for her in the morning, she started off in company with her husband, at nine o'clock of a cold September night, and was detected by the owner in the act of stealing the apples. She was tried and convicted of theft, but subsequently a medical commission was appointed by the supreme court to examine and report upon her case. Their inquiries resulted in the opinion that she was not morally free, and consequently not legally responsible while under the influence of those desires peculiar to pregnancy.[2] If, however,

[1] See also Boileau de Castelnau De l'epilepsie dans ses rapports avec l'aliénation mentale, considérés au point de vue médico-judicaire. Annales d'Hygiène publ. et de Médecine Lég., Avril, 1852, No. 94.

[2] Ray on Insanity, pp. 192–3. Dr. Chipley, in an interesting article in the American Journal of Insanity for July, 1866, remarks with much justice on the hard use to which several ancient cases of "monomania" are put, and this peculiarly applies to the cases in the text, and others cited from Gall and Spurzheim. "It must strike one as curious," he says, "how often these same old cases are made to do duty. They pass down from one author to another as sacred heirlooms pass from one generation to another; and in them seem to be garnered all the affections of those who consider them as the most perfect specimens of the class they are made to represent. This is the more remarkable, since within the past few years the whole theory of moral insanity has been ably contested by such writers as Heinrich, Leubuscher, Mayo, and others, and it no longer receives that uniform approbation in the land where it was first recognized as was once accorded to it. Curiously enough, as it is losing ground and becoming effete in the land of its birth, it meets 'with an increased support in our own country.' Is its destiny to be like that of the current fashions, which, as they fade away in America, enjoy a short reign, and then give place to other discoveries?"

the full report of this case could be secured, we must conclude, judging from subsequent German decisions, that it would exhibit some proof of mental disease.

§ 594. The same remark applies more strongly to a well-known case cited by Foderá.[1] "I had a female servant," he adds, "who *was a very good Christian, very wise, and very modest*, but who could not prevent herself from stealing in secret, from myself and others, even the most trifling things, though aware of the turpitude of the action. I sent her to the hospital as mad. After a long time, appearing to be reclaimed, she was restored to her place among the other servants; by little and little, in spite of herself, the instinct returned; and being distracted on the one hand by the evil propensity, and on the other by the horror which she felt of it, *she fell into an access of mania, and suddenly died in the violence of a paroxysm.*" The "access" was no doubt the manifestation of mania previously occult.

§ 595. A trial, involving the defence of kleptomania, was, in 1855, the cause of much discussion by the London press. Mrs. R., the wife of a physician of rank and affluence, was detected in secreting some French cambric handkerchiefs in the shop of a respectable haberdasher. The jury were unable to agree, and the Times, in discussing the case, made the following statement:—

"It is an instance of that not very uncommon monomania which leads persons, otherwise estimable and well conducted, to pilfer articles of a trifling value, in obedience to the impulses of a diseased imagination. The fact is notorious that many persons of high rank and ample means have been affected with this strange disorder. Every one who is acquainted with London society could at once furnish a dozen names of ladies who have been notorious for abstracting articles of trifling value from the shops where they habitually dealt. Their *modus operandi* was so well known, that on their return from their drives their relatives took care to ascertain the nature of their paltry peculations, inquired from the coachman the houses at which he had been ordered to stop, and, as a matter of course, reimbursed the tradesmen to the full value of the pilfered goods. In other cases a hint was given to the various shopkeepers

[1] For other cases, *vide* Münchmeyer, in Henke's Zeitschrift, vol. xlix. p. 350; Dict. des Sciences Médicales, tome xiv. art. Femme, p. 624, and art. Grossesse; Prager Vierteljahrschrift, v. 30, Bd. 2, p. 121.

at whose houses these monomaniacs made their purchases, and they were simply forewarned to notice what was taken away, and to furnish the bill, which was paid as soon as furnished, and, as a matter of course, by the pilferer herself, without any feeling of shame, or emotion of any kind." Of Lady Cork similar anecdotes are related by Mrs. Kemble.[1]

With regard to the motiveless nature of some thefts and the singularly incorrigible character of some thieves, Casper makes some pertinent remarks: "The rare cases which Marc refers to, in which the thief throws away the object stolen, or spontaneously proposes to pay for it, admit of physiological explanation. We do not mean that very common state of perversity and malignity which may be the cause of some thefts of this kind; what we mean is, that so much tact, address, and courage are often needful to commit a theft without being discovered, that it is so needful to watch and to seize the right moment, to plan with care and to execute with promptitude, that one can comprehend the great pleasure which is experienced in overcoming such difficulties, and how much so perilous an enterprise, crowned with success, is flattering to the self-approbation of the thief.

"I am convinced, also, that in some individuals a real attraction is felt in this chase after the property of another. I say chase, for I can compare it to nothing better than the passionate desire to follow a hare or a fox at the hazard of life, or to watch for the prey like fishermen in England, who remain whole days on the water, patiently watching the least movement of their game. I am thoroughly convinced that this emotion is of much force in holding thieves to their mode of life, and it is in this manner only that we can explain how it is that some of them, after a long imprisonment, immediately recommence to steal, although they well know that a second punishment more severe than the first awaits them."

§ 596. The *value* of the thing stolen, as has been already noticed, and as is well illustrated by Dr. Kieser, does not always enter into the motive. Old bits of iron, wood, or thread are stuck furtively into the pocket.[2] But it must not be forgotten, that, while a *market* value may amount to

Value of article stolen not necessarily an element.

[1] Atlantic Monthly, March, 1877, p. 435. See also article by Dr. J. C. Bucknill, Journal of Mental Science, July, 1862.

[2] Elemente der Psychiatrik, p. 195.

zero, a *conventional* value may be higher. Thus, when Dr. Buckland was Dean of Westminster, he received anonymous letters, containing a chip of black oak cut from the coronation chair, and a fragment of the tomb of Henry VIII., which the writers stated they had purloined in their youths and now desired to return. Here were cases, it might be said, of "kleptomania," and the reason given would be that the things were of no value. But a scrutiny of the case will show that in this, as in all cases of the purloining of "relics," the reverse is the truth. The chips were taken because they were believed to have value. They were curiosities; they would give a sort of *éclat* to the collections of their possessors. But it was soon found that this would not answer. To *exhibit* these chips would be to confess the larceny. They could not, therefore, be placed in the collection. They were stolen because they were of *some* value. They were returned when it was found their value was lost by their theft. If in such cases "kleptomania" be established as conferring irresponsibility, there would be few memorials of past distinction that would not be in a short time chipped away.[1]

Criticism of Krafft-Ebing.

§ 597. Dr. Krafft-Ebing, whose high position as a psychological physician has already been noticed, and who for sagacity and experience has no superior, thus (1871) speaks, under the title "Wahnsinn," in Holtzendorff's Encyclopædia, a work, as has been said, of very high juridical authority: "In the process of maniacal excitement there is sometimes a marked propensity for stealing. But this impulsive, vehement compulsion (Drang) to stealing is never an isolated pathological symptom. '*Kleptomania*,' *in this sense, like the other* '*monomanias*,' *is impossible.* As part-symptoms of general psychical disease, we may undoubtedly class morbid impulses to kill, to steal, etc. These have been erroneously called monomanias, and the general condition of disease has been, by this process, ignored. *The doctrine of monomania is to-day rightly abandoned.*"[2]

Unreasonableness does not prove insanity.

§ 598. What, then, are the tests by which "kleptomania" is determined? Matthey tells us that it exists whenever there is a stealing without necessity, without being compelled by the cravings of misery. But is it a requisite of criminal stealing that it should be impelled by neces-

[1] See *infra*, § 598.

[2] See *supra*, § 570.

sity, and by the cravings of misery? Are thieves exclusively those who are impelled by "le besoin pressant de la misère?" Certainly the records of our criminal courts do not show this. Most of those who are indicted for larceny, indeed the whole class of shop-lifters, and of pickpockets, are persons of good appearance, well-dressed, with intellects which would afford them adequate support in trade, and sometimes even luxurious lives. Thieves of this class steal, not for necessaries, but to supply luxurious superfluities. The number of those who steal to appease hunger, or to buy clothing that is simply decent, is small.

§ 599. Another mark of "kleptomania," according to Marc, is the stealing of articles of value, small in comparison with the extent of the offender's estate. But is it an incident of criminal larceny that the article stolen should be large in comparison with the offender's estate? Have we not already seen[1] that collections of coins and curiosities have to be jealously guarded to preserve them from the depredations of avaricious collectors? Have we not had cases of great depredators, who, with immense spoils already secured, have gone on embezzling? Are there not in the criminal reports frequent instances of rich but persistent thieves?

§ 600. It is said, again, by Marc, that this supposed propensity is marked by indifference to the stolen article when obtained; it is soon discarded or thrown away. But is not the man who is "alieni appetens" very often, to use Tacitus's fine antithesis, "sui profusus?" Is not that which is lightly got often lightly parted with? Are there not numerous cases in the books in which articles of jewelry are stolen for the purpose of being given away?

§ 601. Then, again, we have assigned as a test of "kleptomania" the return by the offender of the thing stolen to the party from whom it was taken. But have we not numerous instances of "conscience money" returned to government—money of which it is the distinguishing mark that it was unconscientiously taken and is conscientiously returned? And may there not be sometimes a passion for pilfering like a passion for fishing or hunting, which, without being "irresistible," may yet spend itself in the pursuit,

[1] *Supra*, § 596.

and, when the object is obtained, be followed by sober reflection and by amends?

Kleptomania not a proof of insanity.

§ 602. Undoubtedly insane persons do pilfer, and pilfer sometimes with much ingenious surreptitiousness; and undoubtedly, as Sander illustrates,[1] this is often a symptom of incipient mental paralysis. The instinct for acquisition is congenital; when the mind fails and the idea of property becomes confused, this instinct often appears in appropriating and even secreting the property of others. But this is a *symptom* of a decaying or disordered intellect, not a proof of monomania coexistent with sanity.

§ 603. In other words, "kleptomania" cannot coexist with sanity, nor can a sane person be a "kleptomaniac."[2]

3. "*Pyromania*" (*morbid incendiary propensity*).

Pyromania a symptom of insanity.

§ 604. Although this abnormal propensity has no substantive existence as a monomania, it will remain, nevertheless, worthy of much study as a symptom of insanity. In investigating such cases, the following inquiries should be made:—

a. In persons *who have passed the age of puberty*, whether there is not depression or partial insanity as a basis; whether the individual was not overcome and impelled to the deed by a nameless dread which he could not dispel, or by some crazy notion before concealed.

b. In persons *just arrived at the age of puberty*. Here the state of development in general, and in particular that of the mind, of the whole body, and of the sexual organs, must be accurately weighed and estimated, with special reference to age and sex, education and mode of life, as experience teaches that the irregularities of every kind which here occur (such as accelerated and impeded growth, unusual prostration and fatigue of the limbs, with painful sensations not produced by adequate visible causes, swellings of the glands, anomalies in menstruation, cramps and other nervous

[1] Vierteljahrschrift f. gericht. Méd. 1863; see also cases in Appendix to third edition of this work, §§ 843, 844.

[2] See *supra*, §§ 146–162. To this effect may be cited the testimony of Dr. Gray in the Guiteau case, Washington, Jan. 1882.

attacks, and particularly irritation of mind), exert the most important influence on the growth and increase of certain desires and inclinations, and easily impair the power of self-control. These transition states acquire a particular significance when accompanied by home-sickness, which, without necessarily attaining the height of complete melancholy, becomes a powerful element in morbid derangement.

c. Where the individual is yet in infancy. Here, in the absence of reason, reflection, and religious and moral culture, a childish curiosity generally furnishes the motive, more rarely a grudge, anger, or revenge ; but physical and mental or moral causes may also be at work independently or as auxiliaries. Tender years are sufficient, in such cases, to exclude the idea of criminal responsibility.

§ 605. "A morbid propensity to incendiarism or *pyromania*, as it has been termed, where the person, though otherwise rational," it is stated by Dr. Ray, "is borne on by an irresistible power to the commission of this crime, has received the attention of medical jurists in Europe, by most of whom it has been regarded as a distinct form of insanity, annulling responsibility for the acts to which it leads. Numerous cases have been related, and their medico-legal relations amply discussed by Platner, Vogel, Masius, Henke, Gall, Marc, Friedreich, and others. In a few of these cases the morbid propensity is excited by the ordinary causes of insanity ; in a larger class it is excited by that constitutional disturbance which often accompanies the menstrual periods ; but in the largest class of all, it occurs at the age of puberty, and seems to be connected with retarded evolution of the sexual organs. The case of Maria Franc, quoted by Gall from a German journal, who was executed for house-burning, may be referred to the first class. She was a peasant of little education, and, in consequence of an unhappy marriage, had abandoned herself to habits of intemperate drinking. In this state a fire occurred in which she had no share. From the moment she witnessed this fearful sight, she felt a desire to fire houses, which, *whenever she had drunk a few coppers' worth of spirits*, was converted into an irresistible impulse. She could give no other reason nor show any other motive for firing so many houses than this impulse which drove her to it. Notwithstanding the fear, the terror, and the repentance she felt in every instance, she went and did it afresh. In other

Ray's opinion.

respects her mind was sound. Within five years she fired twelve houses, and was arrested on the thirteenth attempt." But as to this statement, two qualifications must now be kept in mind. First, whatever may have been the temporary reception of this doctrine by alienists thirty years ago, it is now, as is shown by Dr. Liman in his (1871) edition of Casper, almost entirely without high psychologico-medical support. Second, a close examination of the case of Maria Franc exhibits, as subsequent observers agree, mental disturbance, which, when she was inflamed by the "few coppers' worth of spirits" above noticed, readily took the incendiary type.[1]

Disapproved *in foro judicio*

§ 606. "This plea," we are told by Taylor, "has been already admitted in English law,[2] but chiefly"—it should have been said *only*—"in those instances in which there was strong reason to suspect intellectual aberration. In one modern case,[3] the prisoner was convicted on the principle that, although of weak intellect, she knew right from wrong."[4] Among several important trials in which this plea has been urged in defence, the one most interesting to the medical jurist is that of *James Gibson*, tried before the high court of justiciary, Edinburgh,[5] of which a very full report will be found in Cormack's Edinburgh Journal, February, 1845, p. 141. The prisoner was charged with setting fire to certain premises, and the defence chiefly rested upon the allegation that he was in a state of mind which rendered him irresponsible for the act. The medical evidence was generally in favor of the insanity. The lord justice clerk (Hope), in a very elaborate charge to the jury, laid down for their guidance most of the legal propositions which have been already discussed under homicidal mania. He remarked that they were "not to consider insanity according to the definitions of medical men, especially such fantastic and showy definitions as are found in Ray, whose work was quoted by the counsel for the panel, and in many other medical works on the subject. He adopted Mr. Alison's view that the consciousness of right and wrong must be applied to the *particular act*, and not to crime in the abstract. The

[1] As to this and other of Gall's cases, see *supra*, § 593, note 2, p. 489.

[2] See cases, Med. Gaz. xii. p. 80.

[3] Reg. *v.* White, Wilts. Summer Ass. 1846.

[4] See Ann. d'Hyg. 1833, ii. 357; 1834, ii. 94.

[5] Dec. 23, 1844.

duty of deciding on this question is with the jury; it is not to be delegated to medical men, and by relying upon their own judgment their decisions would be nearer the truth than that of any body of medical witnesses." The jury negatived the plea, and the prisoner was sentenced to transportation for fourteen years.[1]

An instance of insane pyromania may be found in the case of *Jonathan Martin*, who fancied himself to be deputed from God to burn down the Cathedral of York, in order to do away with the heresies which he supposed to exist in the church.[2]

As exhibiting the checks proposed by those who maintain the independent existence of "pyromania" as a "monomania," we call attention to the following, laid down by Hencke, adopted by Marc, and recommended by Dr. Ray:—

§ 606*a*. 1. "To prove the existence of pyromania, produced by the sexual evolution, the age should correspond with that of puberty, which is between twelve and fifteen. Sometimes, however, it may occur, especially in females, as early as the seventh or tenth year, and, therefore, if the symptoms are well marked, we have a right to attribute them to this cause.

Checks proposed by Hencke.

2. "There should be present symptoms of irregular development; of marked critical movements, by means of which nature seeks to complete the evolution. These general signs are, either a rapid increase of stature, or a less growth and sexual development than is common for the age of the individual; an unusual lassitude and sense of weight and pain in the limbs, glandular swellings, cutaneous eruptions, etc.

3. "If, within a short time of the incendiary act, there are symptoms of development in the sexual organs, such as efforts of menstruation in girls, they deserve the greatest attention. They will strongly confirm the conclusions that might be drawn from the other symptoms, that the work of evolution disturbed the functions of the brain. Any irregularity whatever of the menstrual discharge is a fact of the greatest importance in determining the mental condition of incendiary girls.

4. "Symptoms of disturbance in the circulating system, such as irregularity of the pulse, determination of blood to the head, pains in the head, vertigo, stupor, a sense of oppression and distress in

[1] Taylor's Med. Jur. 595.

[2] Ibid. p. 595.

the chest, are indicative in young subjects of an arrest or disturbance of the development of the sexual functions, and therefore require attention.

5. "For the same reason symptoms of disturbance in the nervous system, such as trembling, involuntary motion of the muscles, spasms and convulsions of every kind, even to epilepsy, are no less worthy of attention.

6. "Even in the absence of all other symptoms, derangement of the intellectual or moral powers would be strong proof, in these cases, of the existence of pyromania. Of the two, the latter is far the more common, and is indicated by a change in the moral character. The patient is sometimes irascible, quarrelsome, at others, sad, silent, and weeping, without the slightest motive. He seems to be buried in a profound revery, and suddenly starts up in a fright, cries out in his sleep, etc. These symptoms may have disappeared and reappeared, or degenerated at last into intellectual mania.

7. "The absence of positive symptoms of mental disorder, as well as the presence of those which appear to show that the reason is sound (so it is argued), is not incompatible with the loss of moral liberty." As giving the old but now exploded theory on this point, the following may be cited from Marc: "Even when, previously to the incendiary act, they have shown no evident trace of mental alienation, and been capable of attending to their customary duties; when, on their examinations, they have answered pertinently to questions addressed to them; when they have avowed that they were influenced by a desire of revenge; we cannot conclude with certainty that they were in possession of all their moral liberty, and that, consequently, they should incur the full penalty of the crime. These unfortunates may be governed by a single fixed idea, not discovered till after the execution of the criminal act. Pyromania, resulting from a pathological cause, may increase in severity, as this cause itself is aggravated, and suddenly be converted into an irresistible propensity, immediately followed by its gratification."[1]

§ 607. Griesinger views the question with his usual philosophical breadth: "If, from the observations which have been published upon this subject, we exclude all those cases where egotistical motives

[1] Ray on Insanity, 201.

Opinion of Griesinger that pyromania is impossible.

have evidently guided the hand of the incendiary, there still remains a certain number in which this crime of arson has been committed by patients laboring under a well-marked melancholia (particularly of nostalgia passing into mania), a state which is often accompanied by important derangements in the general health, and frequently in the sexual organs. The morbid impulse develops itself precisely in the same manner as does the homicidal impulse which we have just been studying. The feeling of mental anxiety and the general disturbance which arises from the morbid condition of the faculties do not, as has been said (Masius), impel the individual to seek to stifle this anxiety by the sight of a great flame, but merely to relieve by an outward act, however negative and destructive in character, the profound discord and uneasiness which rule within, and thereby to obtain peace and tranquillity. The particular direction which this morbid impulse takes, viz., incendiarism, may arise from the fact that to those persons in whom this tendency has been most accurately observed—namely, young people, particularly young maid-servants—fire, with which they in the performance of their duties have much to do, is always ready at hand, and presents itself as the readiest means by which they can satisfy the morbid craving which torments them—a means which is easily employed, and which requires neither great energy of action nor violent determination to make use of.

"*Away, then, with the term pyromania, and let there be a careful investigation in every case into the individual psychological peculiarities which lie at the bottom and give rise to this impulse.*

"The grand question *in foro*, in all such cases, must ever be to ascertain whether there existed a state of disease which limited, or could have limited, the liberty of the individual. *Sometimes the symptoms of undoubted mental disease can be clearly distinguished —a dominant feeling of anxiety, hallucinations, states of hysterical exaltation; in other cases, the actual existence of a nervous disease (epilepsy or chorea) renders probable the assumption that the accused has been subject to some passing mental aberration.* We should not forget that usually very little is wanted to interfere with the liberty of action; they are, for the most part, young, childish or half childish, often morally and intellectually weak, silly, and capricious individuals. The incendiary act often appears

to be utterly without any motive, the feeble *ego* having opposed no resistance to the thought of the deed which suddenly sprang up.

"Of course there are also cases where the insane set fire to buildings under the impulse of motives very different. Jonathan Martin, who burned the Cathedral of York, was not a melancholic, but was evidently laboring under chronic partial dementia, and it was in consequence of his hallucinations that he sought 'to purge the house of the Lord of the unworthy priests' who dwelt in it.

"*To include this case under the title of 'pyromania' (e. g.*, Pinel, 'Path. lérébr.,' p. 328) *is the necessary but evil result of a superficial classification.*"[1]

So Krafft-Ebing.

§ 608. Dr. Krafft-Ebing, in the article on "monomanias" already quoted, says: "Incendiarism through psychical disease is always a symptom of such disease, though variously induced. With persons suffering from nostalgia and melancholia, it is prompted by terror and sensual delusions; with maniacs, by insane conceptions; with idiots, by childish pleasure in fire, or diseased passion (revenge). With youthful culprits the crime is more frequent, because it requires no courage, and is easily committed." This eminent and experienced observer holds, as has been seen, that the theory of "monomania" is in itself psychologically absurd.[2]

Statistics on subject disprove the mania theory.

§ 609. The statistics that have recently (1871) been collected on this topic go a great way to refute the theory that there is a special function which, when deranged, exhibits itself as a morbid incendiary propensity, and that there is a particular age when this derangement is apt to occur. Notwithstanding the assertion that this is a well-known and constant disease, there are some sections of the country in which all the cases of arson that have been tried for years are those in which adults were the defendants, and this without a single one of the "pyromaniac" symptoms which have been heretofore detailed. The table of Prussian criminal statistics for twelve years shows that out of a thousand trials of children, of the ages which "pyromonia" is said to affect, but a single case of incendiary crime is to be found.

[1] Griesinger, Ment. Path., Syden. ed. § 129.

[2] See *supra*, § 570.

§ 610. The doctrine, in fact, has arisen from the difficulty felt by learned and philosophical experts in placing themselves in the position of a young servant charged with arson. A boy of ten years[1] set fire, without apparent motive, to his father's house. Mental unsoundness either at the time of or after the act was not probable; and there were no anomalies of physical development or of physical disease. He was aware of the penal nature of the act. He went about it cautiously, removing beforehand a child that was placed under his care. The only assignable cause was childish caprice. A philosophical expert would with difficulty understand this, not being able to put himself in the boy's place. But the court and jury are forced to do this, and hence in this case the judgment was that the boy was responsible, though in a degree lessened by his youth. Or a girl of the same age, employed as a servant in a farm-house, gets up too late in the morning, and is scolded or deprived of her breakfast. This is a grievance the expert may think but little, but to the girl, who has slight intercourse with any one out of the farm, and to whom the farm is everything, the insult is as mortifying as would be the withdrawal of a German savan's decoration, or the turning, by an English minister, of a petitioner out of doors. The girl goes out and sets fire to a haystack, previously seeing that there is little danger to any one's life by the fire. This is a serious thing to the expert, who looks at fires in their probable consequences; but it is a light thing for the girl, who views the burning haystack as she would a large-sized country hearth-fire. The expert, therefore, hearing the facts, declares that it is impossible that a sane person could commit arson on so slight a provocation, and that the girl must be a "pyromaniac." Yet the provocation, *mutatis mutandis*, is the same as that which led to the "Captain Rock" arsons in Ireland. A peasant is aggrieved. He determines to avenge himself by burning a haystack or perhaps a house. The burning is partly from revenge, partly from a wish to drive off an incongenial neighbor. The propensity is indulged in as long as it can be done so with impunity. It is suppressed as soon as men know that it will be punished.

Doctrine has arisen from misconception of experts.

[1] See case given by Dr. Faber, in the Deutsche Zeitschrift für Staatsarzneikunde for 1870.

§ 611. We must not, however, forget that insane persons sometimes have a propensity to play with fire,[1] as they have for other kinds of mischief; nor are cases unknown in which lunatics have been possessed with the delusion that they were divinely commissioned to use fire to destroy churches, palaces, or even cities. Nor is it denied that an idiot, watching a woman kindling a fire, may, in exercise of those imitative faculties which in him are so strangely divorced from reason, go out and set fire to a house. These are cases of insanity, in which insanity is substantively and independently shown. All that is here asserted is that there is no such thing as "pyromania," as a moral disease, coexistent with mental sanity.[2]

But pyromania may be a symptom of insanity.

§ 612. We must therefore conclude that to give legal validity to pyromania as a defence, substantive derangement should be shown. This results from the positions (1) that special propensities are not regarded as in the legal sense constituting insanity, unless reason is disordered by disease;[3] and (2), that aside from the psychological question, law is ordained for the very purpose of checking such propensities, and preserving the community from devastation.[4] In these conclusions the highest medical authorities unite.[5]

Insanity must be shown to make it a defence.

[§§ 613, 614 *are omitted in this edition for the purpose of condensation.*]

§ 615. "At the meeting of the Vienna Society for Psychiatre, in January, 1871, Dr. Flechner indorsed the opinion of Ideler, who considers pyromania an abstraction, of which the judicial physician has no need, and the views of Casper, Griesinger, Jessen, and Lien, who are of opinion that arson, when committed by insane persons, may be explained as we explain any of their other acts. Dr. Flechner has come to this conclusion, not only from an unbiassed reading of the

Analysis of cases by Dr. Flechner disproving doctrine of pyromania.

[1] Cases of pyromania, as an incident of insanity, are given in Friedreich's Blätter for 1870, p. 33, and for 1871, p. 262. See also 19 Journ. Med. Sci. 456.

[2] See *supra*, §§ 146–161.

[3] *Supra*, §§ 146–161.

[4] *Supra*, §§ 188–403.

[5] See Neue Sammlung Gerichtsärtlicher Gutachten aus den Verhandlungen der Prager Medicinischen Facultät. 1858.

See also translation of Jessen's work on Brandstiftung in 19 Am. Jour. of Ins. 163, 286, 434.

believers in pyromania, but also from studying the cases that have come under his observation during his thirteen years' experience as judicial physician. He insists that there has never come a case under his notice that seemed to justify the recognition of a form of insanity that could consistently be characterized as pyromania.

"Of the eleven cases Dr. Flechner had observed, seven were males and four females; eight were between fifteen and twenty-five, and three were more than thirty years of age; eight were peasants, one was a wagon-maker, one a baker, and one a clerk.

"Case I.—A young man who was pursued by the idea that he would induce his father to comply with an absurd demand by burning the house down.

"Case II.—Hallucinations were present which led to arson as a means of getting money.

"Case III.—An act of revenge for an imagined wrong.

"Case IV.—Originally weak-minded; in consequence of intemperance in drinking, insane.

"Case V.—An act of revenge and maliciousness; the perpetrator weak-minded, and not conscious that the deed was punishable.

"Case VI.—An idiot was hired to set fire to a house for a few kreutzers.

"Case VII.—An idiot was persuaded, by a malicious woman, to fire a house.

"Case VIII.—Arson as a consequence of hatred and revenge. Perpetrator was idiotic and insane.

"Case IX.—A sane but demoralized person. Committed arson five times from malice.

"Case X.—Melancholy, with a feeling of anxiety, tired of life, and increase of these conditions at the period of menstruation; attempt at suicide and arson in consequence of an impulse to do something to get rid of the feeling of anxiety, and to change her place of service.

"Case XI.—That of an idiot, wholly incapable of distinguishing between right and wrong."[1]

The theory that this impulse (Brandstiftungstrieb) is often a concomitant of the first development of puberty, has led to a series of very interesting essays by Landsberg.[2]

[1] 5 Journ. Psyc. Med. 605.

[2] Ueber die Feuerschausucht, Hermann, Vezin (Aerztliches Obergutachen über den Gemüthszustand der

§ 616. In the case of William Spear, who was tried for arson, in 1858, at Utica, before Judge Allen, of the supreme court, pyromania was interposed as a defence. The weight of medical testimony, however, was against the defence, and the jury were so charged by the court. In the course of the charge, Judge Allen said: "The existence of the impulsive mania could only be proved by the commission of the acts which it was sought to excuse, which would be no evidence at all; and the jury could never know, even should it be conceded that such a 'moral mania' might and did exist, whether, in a particular case, the acts were the result of this impulse or the fruits of a wicked and depraved mind. Courts and juries, in the attempt to determine the existence of moral mania, or irresistible impulse, apart from mental disturbance and derangement, as evidenced by the well-known symptoms of mental diseases, as an excuse for crime, would become bewildered and lost in the labyrinth of scientific niceties and fanciful theories. But when called upon to consider the subject of insanity, regarded as a derangement of the intellect, a mental disease, or the manifestations of disease affecting the mind, whether the moral powers were or were not impaired or perverted, they were not entirely without the means of arriving at a satisfactory conclusion, with the aid of intelligent and experienced medical men, and in the exercise of their good judgment."

Juridically and psychologically pyromania has no existence.

The judge then commented upon the evidence bearing upon the question of the insanity of the prisoner in detail, and suggested that "the medical witnesses, who favored the idea of the insanity and consequent irresponsibility of the accused, appeared to think that the particular form of the disease resembled that called *pyromania*, which was evinced by a morbid propensity to incendiarism, and which it was claimed existed when a person otherwise rational was impelled irresistibly to the commission of this crime; that this case was open to remark in this particular, that in every instance in which the prisoner had fired a building, the act was traceable to

sich wegen Brandstiftung in Untersuchung befindenen); Höfling (Die Lehre vom krankhaften Brandstiftungstriebe); and Meding (Ein Nachtrag zu dem Gespenst des Brandstiftungstriebes). See an interesting case of alleged pyromania in State *v.* Greenwood, reported in 5 Am. Journ. of Insan. 237.

motives of hatred, and a desire for revenge upon some individual for an act, really committed by that individual, offensive to the prisoner. When every act of incendiarism could be traced directly to a *motive* which would be influential with a *bad man*, and such as not unfrequently, if not ordinarily, influenced men in the commission of like crimes, and when in no instance the torch had been applied from mere love of burning, it would not be safe to excuse the party, simply because the motive might, to the jury, seem inadequate. So long as there was no delusion, no loss of memory and judgment, and the party sought the very usual method of wicked men to gratify revenge, and resorted to the same means to conceal the evidences of his crime, he should not be excused upon any theory of moral insanity, or by reason of any sympathy, which would be entirely misplaced." The judge then submitted the case to the jury, with the remark that it was their peculiar province to determine whether or not the "prisoner was, within the rules thus imperfectly laid down, responsible for the act, and therefore guilty of arson."[1]

Not merely juridically, therefore, but psychologically, must we conclude that "pyromania" has no existence as a specific and independent form of insane irresponsibility.

4. "*Erotomania*" "*aidoiomania*" (*morbid sexual propensity*).

§ 617. There are certain marked features which distinguish the sexual passion from other natural instincts:—

Sexual passion distinct from other natural instincts.

First, it diminishes, while most other appetites, *e. g.*, hunger, intensify, on repression. It is, therefore, capable, which they are not, of restraint by the avoidance of stimulating causes.

Second, it is, with sane persons, accompanied by an instinctive sense of shame. The coarsest peasant, who would answer other natural calls in the market place without a blush, seeks for darkness and concealment in order to satisfy the sexual instinct. Where this sense of shame exists, so that the passion is subjected to it, we can scarcely speak of the passion as irresistible. On the other hand, where there is no sense of shame, we can scarcely speak of the condition as one of sanity.

[1] See *supra*, §§ 146–161.

§ 618. No doubt there are several forms of insanity in which the sexual feeling is disproportionately excited, and no doubt undue sexual indulgence is provocative of insanity. But there is no sound authority, either psychological or judicial, to maintain the position that there can be irresponsible insanity of the sexual feelings in a person otherwise sane.[1]

Irresponsible sexual insanity impossible.

§ 619. Marc, to whose unphilosophical enthusiasm for classification we owe the existence of so many "monomanias," gives the name of aidoiomania to the excess of the sexual impulse, which is called *satyriasis* when it occurs in the male, and *nymphomania*, or *uteromania*, in the female. This abnormal propensity occurs as a symptom of mania, lunacy, and depression, as well as of imbecility with maniacal excitements, but is also, he declares, found coupled with freedom of reason and of self-control; in which case, on the reasoning already given, the responsibility of the agent is not suspended. How far the court, in administering the punishment, is to allow for the circumstance that the individual was carried away in an extraordinary manner by the physical impulse and the external incitement, is a matter for independent consideration.

Views of those in favor of the doctrine.

"Morbid activity of the sexual propensity," says Dr. Ray, "is unfortunately of such common occurrence, that it has been generally noticed by medical writers, though its medico-legal importance has never been so strongly felt as it deserves. This affection, in a state of the most unbridled excitement, filling the mind with a crowd of voluptuous images, and ever hurrying its victims to acts of the grossest licentiousness, though without any lesion of the intellectual powers, is now known and described by the name of *aidoiomania*. We cannot convey a better notion of the phenomona of this disorder, than by quoting a few examples from Gall, by whom it was first

[1] See on this topic an interesting article by Dr. R. L. Parsons, in 5 Journ. Physc. Med. 456. See also Siebold's Gericht. Med. § 210. An interesting case of Uterine Furor will be found in El. v. Siebold's Journ. vol. vi. p. 943. See also a case in Henke's Zeitschr. 41, p. 393. A very able essay on Nymphomania will be found in Dict. des Sciences Méd. von Louyer, Villermay, tome xxxvi. p. 561. See a case of puerperal mania of this class, Rep. Am. Journ. Obst. for 1880, 154; and see a case of erotic delusion, in 22 Journ. Ment. Sci. 439.

extensively observed and its true nature discovered. Its milder forms and early stages, when not beyond the control of medical and moral treatment, are illustrated in the following cases:—

"A robust and plethoric young man came to reside in Vienna. Having no *liaisons*, he was unusually continent, and was soon attacked with erotic mania. Gall, pursuing the treatment indicated by his peculiar views of the origin of the disease, succeeded in restoring him in a few days to perfect health."

"A well-educated, clever young man, who, from his infancy almost, had felt strong erotic impulses, succeeded in controlling them to a certain extent by means of equally strong devotional feelings. After his situation permitted him to indulge without constraint in the pleasures of love, he soon made the fearful discovery, that it was often difficult for him to withdraw his mind from the voluptuous images that haunted it, and fix it on the important and even urgent concerns of his business. His whole being was absorbed in sensuality. He obtained relief by an assiduous pursuit of scientific objects, and by finding out new occupations." But, if he could obtain "relief" by study, it is hard to see why the "mania" was viewed as "irresistible;" and the case, therefore, is open to the same criticism as others from the same source which are invoked so constantly as proof-cases of "monomania." Gall, with all his charms of style, was rather a gossippy and inconclusive anecdotist, than an accurate and exhaustive narrator of facts.[1]

Pinel gives the following: "A man had creditably filled his place in society till his fiftieth year. He was then smitten with an immoderate passion for venereal pleasures; he frequented places of debauchery, where he gave himself up to the utmost excesses, and then returned to the society of his friends, to paint the charms of pure and spotless love. His disorder gradually increased; his seclusion became necessary; and he soon became a victim of furious mania." This, however, is a clear case of mental derangement.

§ 620. Uterine causes, in women, are largely concerned in producing this disease, as a phase of derangement. Women whose character has heretofore been of unsuspected purity and of fastidious refinement, indulge in loose conversation, if they do not give way to loose desires. Sometimes this connects itself with abnormal appetites; some-

Responsibility ceases when act is the result of physical causes.

[1] See *supra*, § 593, note.

times with unnatural sexual abhorrences, as well as with sexual desires. These disorders may be periodical with menstruation; or they may accompany the change of life coincident with stoppage of menstruation; or they may flow from distinct uterine disease. But however this may be, just so far as the act under investigation is the result of physical causes, so far does the patient cease to be morally responsible.[1]

Instances of morbid erotic impulses.

§ 621. Under this head may be considered those cases of morbid erotic impulses which spend themselves on unnatural objects. The more common of these are those which the domestic history of classic antiquity makes familiar to us, and which St. Paul adverts to in the first chapter of the Epistle to the Romans. To what extent these unnatural passions were carried is illustrated by the paintings in at least one of the exhumed chambers of Pompeii. And recent trials have shown, that if the same morbid developments are less numerous at the present day, they are at least equally eccentric.

Some years since the town of Leipsic was startled by the fact that a number of young girls had been assaulted in the streets, by a man wrapped in a cloak, who struck a lancet in their arms, just above the elbow, and then vanished. It was a long time before the perpetrator was discovered. When he was at last detected and put on trial, it turned out that he had been impelled to these outrages by a morbid sexual impulse—that the incision of the lancet had been accompanied with seminal emission—and that his whole existence had become absorbed in the alternate excitement and depression which preceded and succeeded the act.[2]

The same state of facts was developed in the trial, in London, of a man named Williams, for a similar species of assault.[3]

In the same line is the case of Sprague, already cited.[4]

§ 622. Still more startling were the exposures attending the trial of a sergeant in the French army, in 1848. For some time previous, dead bodies had been exhumed and had been torn to pieces at or near the graves. On closer inspection the horrible fact was

[1] See on this subject Dr. Storer's very valuable treatise on "Insanity in Women," Boston, 1871, and authorities cited *supra*, note 1, p. 506.

[2] Wharton's Cr. Law, § 824. *Supra*, § 573.

[3] Lawyer's Magazine, London, 1792, vol. ii. p. 351.

[4] *Supra*, § 573, note 2, p. 470.

disclosed that sexual connection had been attempted with the female corpses. The guilty party turned out to have been a young man scarcely twenty-five, of prepossessing manner and appearance, and otherwise respectable character. The psychological features were the same as in the preceding cases. The act was preceded by uncontrollable excitement, and followed by great exhaustion.[1]

§ 623. Foderé tells us of a young monk who, in travelling, happened to lodge in a house where a young woman, who was thought dead, had just been laid out, and offered to pass the night in the chamber where the coffin was, and to watch the dead. During the night, having uncovered it for the purpose of examination, and still finding in her countenance some traces of beauty, he determined to satisfy his lust, although the object was not in a condition for exciting desire. Nevertheless he satisfied himself, and departed early in the morning. The dead person came to life, however, the next day, and nine months afterwards had a child, to the great astonishment of herself and parents. The monk about this time arrived in the same place, and avowed himself the parent of the child, and married the mother after throwing off the vows, which he proved he had been forced to pronounce.

§ 624. The following fact, taken from Brièrre de Boismont, shows a more permanent perversion, and reveals a settled pathologic degradation. A man was arrested in a small town for a crime which no one believed, but which, however, was proved at the trial. A girl, sixteen years old, belonging to one of the best families of the town, had just died. A part of the night had passed, when the noise of a piece of furniture falling in the room where the dead person lay was heard. The mother, whose chamber was next to it, immediately ran there, and, in entering, saw a man escaping in his shirt from the bed of her daughter. Her fright caused her to utter loud cries, which brought around her all the persons of the household. They seized the intruder, who appeared almost insensible to everything passing around him, and who answered but confusedly to the questions addressed him. The first idea was that it was a robber; but his dress and certain signs directed suspicion in another direction, and it was soon perceived that the girl had been polluted when lying dead in her bed. It

[1] Journal of Psychological Med., vol. ii. p. 577.

was proved that the guard had been bribed; and soon other revelations showed that this was not the first time the prisoner, who had received a good education, was in easy circumstances, and belonged to a good family, had performed the act. The trial proved that he had frequently before gained access to the bed of dead young women, and there given himself up to his detestable passion.[1]

But these must proceed from general insanity, or they could be resisted.

§ 625. Psychologically, it is scarcely necessary here to repeat what has been demonstrated as to other pretended "monomanias," that there is no such form of insanity as "erotomania," consisting of insanity of the sexual impulses, all the rest of the individual so affected remaining sane. No doubt sexual anomalies are constant incidents of insanity, and for them an insane person is not penally responsible. But in all cases where the mind is sane, the offender against laws prohibiting sexual offences is, on ethical as well as psychological and juridical grounds, to be held penally responsible. And this results from the position, heretofore fully sustained.[2] that wherever there is reason there is responsibility, and wherever there is responsibility, crime should be punished in proportion to the grade of guilt.

5. "*Pseudonomania*" (*morbid lying propensity*).

Unreasonable to consider this a distinct mania.

§ 626. By what process that which in its elementary stage is a mere negation, *i. e.* the incapacity so generally noticeable in very young children of accurate narration, is concluded to be a *mania*, it would be difficult to say. But so it is, and so is this tendency defined by Dr. Ray.[3] "An inordinate propensity to lying" "is also of no uncommon occurrence in society; and most of the readers of this work have probably met with instances of it in people whose morals in other respects were irreproachable, and whose education had not been neglected. The maxim of Jeremy Bentham, that it is easier for men to speak the truth, and therefore they are more inclined to do so than to utter falsehood, seems, in them, to be completely reversed, for they find nothing more difficult than to tell the truth.

[1] See Renaudin sur les Maladies Mentales, p. 764, Paris, 1854.

[2] *Supra*, §§ 115, 188, 403.

[3] Ray on Insanity, p. 193.

In repeating a story which they have heard from others, they are sure to embellish it with exaggerations and additions, till it can scarcely be recognized, and are never known to tell the same story twice alike. Not even is the slightest groundwork of truth necessary, in order to call forth the inventions of perverted minds, for they as often flow spontaneously, in the greatest profusion, as when based on some little foundation in fact. This propensity seems to result from an inability to tell the truth, rather than from any other cause, as it can be traced to no adequate motive, and is often indulged when truth would serve the interest of the individual better. Like that last mentioned, it is liable to degenerate into unequivocal mania, of which it is sometimes a preliminary symptom, and is also quite a common feature in this disease—a circumstance which Rush considers as proof of its physical origin."

§ 627. Dr. Rush more philosophically traces this habit, for such it should be more properly called, to self-indulgence in untruth. "There are many instances of persons of sound understandings, and some of uncommon talents, who are affected with this lying disease in the will. It differs from exculpative, fraudulent, and malicious lying, in being influenced by none of the motives of any of them. Persons thus diseased cannot speak the truth upon any subject, nor tell the same story twice in the same way, nor describe anything as it has happened to other people. Their falsehoods are seldom calculated to injure any body but themselves, being for the most part of a hyperbolical or boasting nature; but now and then they are of a mischievous nature, and injurious to the characters and property of others. That it is a corporal disease I infer from its sometimes appearing in mad people who are remarkable for veracity in the healthy states of their minds, several instances of which I have known in the Pennsylvania Hospital. Persons affected with this disease are often amiable in their tempers and manners, and sometimes benevolent and charitable in their dispositions. Lying as a vice is said to be incurable. The same thing may be said of it as a disease, when it appears in adult life. It is generally the result of defective education. *It is voluntary in childhood, and becomes involuntary, like certain muscular actions, from habit. Its only remedy is bodily pain inflicted by the rod, or confinement, or abstinence from food;* for children are incapable

The habit is voluntary.

of being permanently influenced by appeals to reason, natural affection, gratitude, or even a sense of shame."[1]

Even insane are responsible for *voluntary* untruths.

§ 628. No doubt the *insane* are irresponsible for the untruths they state, when such untruths are involuntary, *e. g.* the result of delusion; but that they can be rightly made responsible for *voluntary* untruths, and by correction may be checked in the utterance of such untruths, the ordinary discipline of lunatic asylums shows.

Habit does not create irresponsibility.

§ 629. But with the *sane*, while it is unquestionable that falsehood may become a habit, yet, like all other bad habits, no matter how inveterate, it brings with it no irresponsibility. Were it otherwise, a chief motive in preventing the habit from becoming fixed would be removed; and, in fact, a powerful stimulus given in the other direction. The law would then virtually say, "learn to lie—let the habit become incurable—and then you can get goods by false pretences without any danger of punishment; and even to an action for restitution or for damages, you can plead that you are irresponsible, and therefore protected against suit." But the law says no such thing. It sternly but wisely declares that every sane man is responsible, criminally and civilly, for his statements; and, if he is habitually false, this "habit," in a criminal suit, is only viewed as aggravating his guilt. Truthfulness among sane persons, when not actually existing, must be created by the force of general penal laws.[2]

6. "*Oikeiomania*" (*morbid state of domestic affections*).

Prichard's description of this "mania."

§ 630. At the outset it is proper to state that while this state is often a sign of general insanity, it has no existence, either in sound psychology or law, as an independent "monomania." Of this, in its general shape, Prichard thus speaks: "There are many individuals living at large, and not entirely separated from society, who are affected in a certain degree by this modification of insanity. They are reputed persons of singular, wayward, and eccentric character. An attentive observer may often recognize something which leads him to entertain doubts of their entire sanity; and circumstances are sometimes discovered, on inquiry, which assist in determining his

[1] Rush on the Mind, p. 262.

[2] See *supra*, §§ 115, 188, 403.

opinion. In many instances it is found that there is an hereditary tendency to madness in the family, or that several relatives of the person affected have labored under disease of the brain. The individual himself is discovered, in a former period of life, to have sustained an attack of madness of a decided character. His temper and disposition are found, on inquiry, to have undergone a change, to be not what they were previously to a certain time; he has become an altered man; and this difference has perhaps been noted from the period when he sustained some reverse of fortune which deeply affected him, or since the loss of some beloved relative. In other instances the alteration in his character has ensued immediately on some severe shock which his bodily constitution has undergone. This has either been a disorder affecting the head, a slight attack of paralysis, a fit of epilepsy, or some fever or inflammatory disorder, which has produced a perceptible change in the habitual state of the constitution. In some cases the alteration in temper and habits has been gradual and imperceptible, and it seems only to have consisted in an exaltation or increase of peculiarities which were always more or less natural and habitual."[1]

§ 631. Very often this domestic perversity is associated with the most complacent benignity out of doors. Zimmerman, whilst he was inculcating and professing the most serene benevolence, was, by his tyranny, driving his son into madness, and making his daughter an outcast from home. Goethe—no inapt observer of human nature—says, "Zimmerman's harshness towards his children was the effect of hypochondria—a sort of madness or moral assassination to which he himself fell a victim after sacrificing his offspring."[2]

Domestic perversity often associated with social urbanity.

[1] Cited, Ray on Insanity, pp. 168–9. See Feuchtersleben's views on this point. Principles of Medical Psychology, being the outlines of a Course of Lectures by Baron von Feuchtersleben, M.D., Vienna, 1845. Translated from the German by the late H. Evans Lloyd, Esq. Revised and edited by G. B. Babington, M.D., F.R.S., etc. London: printed for the Sydenham Society, 1847, p. 204.

[2] Dean Swift's life furnishes a striking illustration of this species of derangement of the domestic affections. By the indulgence of this morbid tendency to torture the object of his most cherished love, he first succeeded in crushing under the weight of despair a woman whom he really loved, and then, by the recoil, in subjecting himself to that most miserable of all fates, that of an insane old age. Take, as a scene in the first awful drama, the following narrative by Mr. Sheridan: "A short time before Stella died," says he, "a scene passed between the Dean

§ 632. Illustrations of this phase will be found in the following sections. At present it is sufficient to call attention to one feature,

and her, an account of which I had from my father, and which I shall relate with reluctance, as it seems to bear more hard on Swift's humanity than any other point of his conduct in life. As she found her final dissolution approaching, a few days before it happened, in the presence of Dr. Sheridan, she addressed Swift in the most earnest and pathetic terms to grant her dying request, 'that, as the ceremony of marriage had passed between them, in order to put it out of the power of slander to be busy with her fame after death, she adjured him, by their friendship, to let her have the satisfaction of dying, at least—though she had not lived—his acknowledged wife.' Swift made no reply, but, turning on his heel, walked silently out of the room, nor ever saw her afterwards during the few days she lived. This behavior threw her into unspeakable agonies, and for a time she sunk under the weight of so cruel a disappointment."

No wonder was it that, when under the influence of the remorse which was too late awakened, his powerful sensibilities were aroused to the full consciousness of his guilt, he would beat his forehead for night after night, and stride to and fro in his deserted apartment, until at last the only change became that from delirium to melancholy, and from melancholy to delirium. Dr. Winslow gives us the following glimpses of the closing scenes:—

"The most minute account of this melancholy period is given by Dr. Delaney:—

" 'In the beginning of the year 1741 his understanding was so much impaired, and his passion so greatly increased, that he was utterly incapable of conversation. Strangers were not permitted to approach him, and his friends found it necessary to have guardians appointed of his person and estate. Early in the year 1742 his reason was wholly subverted, and his rage became absolute madness. The last person whom he knew was Mrs. Whiteaway, and the sight of her, when he knew her no longer, threw him into fits of rage so violent and dreadful, that she was forced to leave him; and the only act of kindness that remained in her power was to call once or twice at the deanery to inquire after his health, and see that proper care was taken of him. Sometimes she would steal a look at him when his back was towards her, but did not venture into his sight. He would neither eat nor drink when the servants were in the room. His meat, which was served up ready cut, he would sometimes suffer to stand an hour upon the table before he would touch it, and at last he would eat it walking, for during this miserable state of mind it was his constant custom to walk ten hours a day.

" ' In October, 1742, after his frenzy had continued several months, his left eye swelled to the size of an egg, and the lid appeared to be so much inflamed and discolored, that the surgeon expected it would mortify; several large boils also broke out on his arms and body. The extreme pain of this tumor kept him waking near a month; and during one week it was with difficulty that five persons could prevent him from tearing out his eyes. Just before the tumor perfectly subsided and the pain left him, he knew Mrs. Whiteaway, took her by the hand, and spoke to her with his former kindness; that

which is thus admirably sketched by Dr. Mayo: "Marital unkindness is subversive of soundness of mind in the person on whom it is exercised; and exercised it is in a thousand ways in this country, without violence being had recourse to. The state of the law, as Mr. Dickens well observes and terrifically proves, is unprotective of wives. But the mischief is not unavenged; and here the case of the husband retributively commences. Many men are living in a state of continuous and exhausting remorse, under the consciousness that this system of torture is being carried on by them. For, when once the habit is formed, they can neither shake it off, nor bear their self-consciousness under it.

'Culpam pœna premit comes.'

I need not speak of their retrospects, if they should outlive the object of their tyranny."[1]

§ 633. "A very common feature of moral mania," says Dr. Winslow, "is a deep perversion of the social affections, whereby the feelings of kindness and attachment that flow from the relations of father, husband, and child, are replaced by a perpetual inclination to tease, worry, and embitter the existence of others. The ordinary scene of its manifestations is the patient's own domestic circle, the peace and happiness of which are effectually destroyed by the outbreakings of his ungovernable temper, and even by acts of brutal ferocity. Frederick William of Prussia, father of Frederick the Great, undoubtedly labored under this form of moral mania; and it furnishes a satisfactory explanation of his brutal treatment of his son, and his utter disregard for the feelings or comfort of any other member of his family. About a dozen years before his death, his health gave way under

Instances of this "mania."

day and the following he knew his physician and surgeon and all his family, and appeared to have so far recovered his understanding and temper, that the surgeon was not without hopes that he might once more enjoy society and be amused with the company of his old friends. This hope, however, was but of short duration; for a few days afterwards he sank into a state of total insensibility, slept much, and could not, without great difficulty, be prevailed on to walk across the room. In this state of hopeless imbecility he is said to have remained silent a whole year. In 1744 he spoke once or twice to his servant, after which he remained perfectly silent until the latter end of October, 1745, when he expired, in the 78th year of his age.'"

[1] Mayo on Medical Testimony in Lunacy, pp. 137, 138.

his constant debauches in drunkenness; he became hypochondriacal, and redoubled his usual religious austerities. He forbade his family to talk of any subject but religion, read them daily sermons, and compelled them to sing, punishing with the utmost severity any inattention to these exercises. The prince and his elder sister soon began to attract a proportionate share of his hostility. He obliged them to eat and drink unwholesome or nauseous articles, and even spit in their dishes, addressing them only in the language of invective, and at times endeavoring to strike them with his crutch. About this time he attempted to strangle himself, and would have accomplished his design had not the queen come to his rescue. His brutality towards the prince arrived to such a pitch, that he one morning seized him by the collar as he entered his bed-chamber, and began to beat him with a cane in the most cruel manner, till obliged to desist from pure exhaustion. On another occasion shortly after, he seized his son by the hair, and threw him on the ground, beating him till he was tired, when he dragged him to a window, apparently for the purpose of throwing him out. A servant, hearing the cries of the prince, came to his assistance, and delivered him from his hands. Not satisfied with treating him in the most barbarous manner, he connived at the prince's attempts to escape from his tyranny, in order that he might procure from a court-martial a sentence of death; and this even he was anxious to anticipate by endeavoring to run him through the body with a sword. Not succeeding in procuring his death by judicial proceedings, he kept him in confinement, and turned all his thoughts towards converting him to Christianity. At this time, we first find mention of any delusion connected with his son, though it probably existed before. In his correspondence with the chaplain to whom he had intrusted the charge of converting the prince, he speaks of him as one who had committed the most heinous sins against God and the king, as having a hardened heart, and being in the fangs of Satan. Even after he became satisfied with the repentance of the prince, he showed no disposition to relax the severities of his confinement. He was kept in a miserable room, deprived of all the comforts and many of the necessaries of life, denied the use of pens, ink, and paper, and allowed scarcely food enough to prevent starvation. His treatment of the princess was no less barbarous. She was also confined, and every effort used to make her situation thoroughly wretched; and

though, after a few years, he relaxed his persecution of his children, the general tenor of his conduct towards his family and others evinced little improvement in his disorder till the day of his death."[1]

§ 634. The wife of John Wesley was affected with this "monomania;" or, to speak more properly, was in the habit of giving way to a vicious and perverse temper, which brought its retribution at last in the misery it inflicted on herself. "The worst part of Mrs. Wesley's conduct," says Watson, in his life of Wesley, "and which only the supposition of a degree of insanity, excited by jealousy, can palliate, was that she interpolated several letters, which she had intercepted, so as to make them bear a bad construction; and, as Mr. Wesley had always maintained a large correspondence with all classes of persons, and among others with pious females, in some of whose letters there were strong expressions of Christian affection, she availed herself of this means of defaming him. Some of these she read to different persons in private, and especially to Mr. Wesley's opponents and enemies, adding extempore passages in the same tone of voice, but taking care not to allow the letters themselves to be read by the auditors; and in one or two instances she published interpolated or forged letters in the public prints. How he conducted himself amidst these vexations, the following passage in a letter from Miss Wesley to a friend, written a little before her death, will show. They are at once important, and explanatory of the kind of annoyance to which this unhappy marriage subjected her uncle, and as containing an anecdote strongly illustrative of his character:—

"I think it was in the year 1775, my uncle promised to take me with him to Canterbury and Dover. About this time Mrs. Wesley had obtained some letters which she used to the most injurious purposes, misinterpreting spiritual expressions, and interpolating words. These she read to some Calvinists, and they were to be sent to the Morning Post. A Calvinist gentleman, who esteemed my father and uncle, came to the former, and told him that, for the sake of religion, the publication should be stopped, and Mr. Wesley be allowed to answer for himself. As Mrs. Wesley had read but did not show the letters to him, he had some doubts of their authenticity; and though they were addressed to Mr. John Wesley, they

[1] *Vide* Lord Dover's Life of Frederick; Winslow's Anatomy of Suicide, pp. 233, 234, 235.

might be forgeries; at any rate he ought not to leave town at such a juncture, but clear the matter satisfactorily.

"My dear father, to whom the reputation of my uncle was far dearer than his own, immediately saw the importance of refutation, and set off to the Foundery to induce him to postpone his journey, while I, in my own mind, was lamenting such a disappointment, having anticipated it with all the impatience natural to my years. Never shall I forget the manner in which my father accosted my mother on his return home. 'My brother,' says he, 'is indeed an extraordinary man. I placed before him the importance of the character of a minister; the evil consequences which might result from his indifference to it; the cause of religion; stumbling-blocks cast in the way of the weak; and urged him by every relative and public motive to answer for himself, and stop the publication. His reply was, Brother, when I devoted to God my ease, my time, my life, did I except my reputation? No. Tell Sally I will take her to Canterbury to-morrow.'"

"I ought to add, that the letters in question were satisfactorily proven to be mutilated, and no scandal resulted from his trust in God.

"Some of these letters, mutilated, interpolated, or forged by this unhappy woman, have got into different hands and are still preserved. In the papers of the Wesley family, recently collected, there are, however, sufficient materials for full explanation of the whole case in detail; but as Mr. Wesley himself spared it, no one will, I presume, ever further disturb this unpleasant affair, unless some publication on the part of an enemy, for the sake of gain, or to gratify a party feeling, should render it necessary to defend the character of this holy and unsuspecting man."[1]

[1] The following is the inscription on a monument erected in Horsley Down church, in Cumberland, England:—

Here lie the bodies of
Thomas Bond and Mary his wife.
She was temperate, chaste, and charitable,
But
She was proud, peevish, and passionate.
She was an affectionate wife, and a tender mother,
But
Her husband and child whom she loved, seldom saw her countenance without a disgusting frown,
Whilst she received visitors whom she despised, with an endearing smile.

This species of insanity, supposing mental derangement to be substantively proved, will invalidate a will made under its immediate influence.[1]

§ 635. It is hardly necessary to repeat that "morbid domestic feeling" is not to be viewed as a distinct "monomania," capable of psychological proof as such. Frequently it is a mark of insanity.

Her behavior was discreet towards strangers,
But
Imprudent in her family.
Abroad her conduct was influenced by good breeding,
But
At home by ill temper.
She was a professed enemy to flattery, and was seldom known to praise or commend;
But
The talents in which she principally excelled
Were difference of opinion, and discovering flaws and
Imperfections.
She was an admirable economist,
And without prodigality.
Dispensed plenty to every person in her family,
But
Would sacrifice their eyes to a farthing candle.
She sometimes made her husband
Happy with her good qualities,
But
Much more frequently miserable with her
Many failings.
Insomuch that in thirty years' cohabitation,
He often lamented that
Maugre all her virtues,
He had not on the whole enjoyed two years
Of matrimonial comfort.
At length
Finding she had lost the affection of her husband, as well as the regard of her neighbors, family disputes having been divulged by servants,
She died of vexation, July 20, 1768,
Aged 48 years.
Her wornout husband survived her four months and two days, and departed this life
November 28, 1768,
In the 54 year of his age.
William Bond, brother to the deceased,
Erected this stone as a
Weekly monitor to the wives of this parish,
That they may avoid the infamy of having
Their memories handed down to posterity
With a patchwork character.

[1] See *supra*, §§ 34–60.

Oikeiomania not a distinct mania, and cannot create irresponsibility in the sane.

But with sane persons its existence is the just subject of moral and social as well as of penal reprobation. It is true that the *law* may be unable to reach the particular offences into which this form of evil temper runs. It carries with it, however, as has been said, its own accuser and condemner in the misery to self to which it leads. And, so far as it exhibits itself in overt acts, the tendency is one which it is the duty and within the jurisdiction of the state, by general penal laws, to repress.[1]

7. "*Suicidal mania*" (*morbid propensity to self-destruction*).

Suicidal propensity consistent with sanity

§ 636. That this propensity may, in the eye of the law, coexist with sanity, has been already shown.[2] To what extent suicide avoids a policy of life insurance, has been also the subject of prior discussion.[3]

[1] See *supra*, §§ 115, 188, 403. For articles on this topic see Journ. Med. Leg. Soc. N. Y. (N. Y. 1872) pp. 1–37, 135–143.

[2] *Supra*, § 241.

[3] *Supra*, §§ 228–241.

The constantly increasing occurrence of suicide particularly attracts the public attention at present (1882). During the years 1875 to 1878 statistics showed an average of 280 suicides to every million inhabitants in Berlin, 285 in Vienna, 400 in Paris, 450 in Leipsic; London, on the contrary, showed a smaller average than any other great city—only 85 to a million. The increase of suicide is illustrated by the fact that in Berlin in 1881 it is stated not to be an unusual circumstance for four persons in one day to die by their own hands. At present the problem of suicide is being scientifically examined from different points of view. The work of Dr. Masaryk, "Der Selbstmord als sociale Massenerscheinung, Vienna, 1881," and especially the writings of the eminent compiler of moral statistics, Alexander von Œttingen, upon acute and chronic suicide, undertake to prove that the increase of suicide is a peculiar result of over-development of culture. Among the facts which Herr von Œttingen cites, one is especially worthy of notice—that suicide finds its greatest number of victims in the kingdom of Saxony, and in the city of Leipsic, according to Œttingen, "the Chimborazo of suicide." "People kill themselves more in Saxony than in any other part of the earth."

The numbers of suicides increase as we approach Saxony. In the plains of Sarmatia the proportion is only 30 in every million, in the Baltic provinces it increases to 65, in Eastern and Western Prussia it is almost 100, in Brandenburg 200, in the Saxon provinces 235, and in the kingdom of Saxony it is something over 400 in a million. The average of suicide increases from the south in the same proportion as it does from the north; for instance, in Southern Bavaria, the average is not quite 70, while in upper Franconia, which borders on Saxony, it is between 150 and 160. The greatest

§ 637. "The pathological and etiological history of suicide," says Griesinger, "does not appertain entirely to the province of mental medicine; in fact, whatever certain scientific authorities may assert, we are not warranted in coming to the conclusion that suicide is always a symptom or a result of insanity. There is no insanity present where the feeling of disgust with life is in exact relation to the actual circumstances; where evident moral causes exist which sufficiently account for the act; when the resolution has been deliberately made, and might have been abandoned had the circumstances changed; and in which we discover no other symptom of mental derangement.

Suicide not always a symptom of insanity.

"When a man of very delicate feelings puts an end to his existence, that he may not survive the loss of his honor, or of some other highly valued possession which forms an intimate part of his intellectual being—when a man prefers death to a miserable, contemptible life, full of mental and physical ills—morality, indeed, may call him to account for the deed, but there exists no ground on which we can consider him insane; the abhorrence of life and the idea of self-annihilation correspond to the intensity of the painful impressions which bear upon the individual, and it is after deliberate reflection that the act is resolved upon and perpetrated.

"But the cases which come under this category are the rarest; more frequently the tendency to commit suicide depends either upon fully developed melancholia, with all its usual symptoms, or (and this is more frequent) on a state closely bordering upon melancholia —of moderate but at the same time general painful perversion of the feelings.

"The apparently deliberate and cold-blooded act of suicide can,

number of suicides occur in spring and summer, in May, June, and July, instead of in November and December, as one would naturally suppose; the larger proportion are committed between 6 and 8 o'clock in the morning.

Suicides by hanging, which Herr von Œttingen calls "the usual means," are most frequent in Prussia and Saxony; the four cases mentioned in Berlin were by this means. Œttingen points out that in the comparatively nobler causes of despair (such as unhappy love, shame, and remorse) the so-called nobler methods are used—firearms and poison. In most of the European states there is one female suicide to every three or four male. It is a well-known fact that drunkenness plays a prominent part in the statistics of suicide.

when considered *per se*, no more prove the non-existence of insanity than any other deliberate act committed in mental disease.

"The disposition to originate those states of mental suffering which most generally coincide with exhaustion, coldness, and deadening of the reaction of the feelings, is precisely the same as the disposition to mental diseases. When these have once appeared, they become fixed, and rule the individual the more easily according as a feeble *ego* offers only slight resistance to them (p. 51); they therefore frequently appear as essential result of a previously weak character. They are, however, essentially distinguished from the abhorrence of life which is the result of certain explicable moral causes, by their internal origin, by the want of sufficient moral causes to account for the act; frequently by their evident appearance in consequence of some physical disease, by presenting periodic exacerbations without any moral cause; and, finally, by being sometimes undoubtedly hereditary. When the whole psychical life is governed by this perversion of the feelings, there arise no limiting or restricting ideas and impulses to resist the thought, be it spontaneous or suggested, of self-destruction; or these ideas and impulses soon become worn out and exhausted, owing to the existence of those which constantly, and with the persevering obstinacy of all other melancholic dispositions of this kind, urge themselves upon the *ego*.

"Indeed, the more insignificant the outward motives to the deed, the more likely are we to find, in the antecedent history of the individual, causes, or even certain symptoms, of incipient insanity; and the more barbarous and the more extraordinary the means employed for the perpetration of the deed, the more are we warranted in considering it to be a result of some morbid perversion of the faculties."[1]

[§ 638 *omitted in this edition as merely cumulative.*]

[1] See Griesinger's Mental Pathol., Syden. ed. (1867) § 125; Mende, in Henke, *Zeitschrift für Staatsarrneikunde*, 1821; Esquirol, *Maladies Mentales*, i. p. p. 555.

The recent work of Dr. Henry Morselli, of the University of Turin, has immediately been recognized as the most thorough and complete investigation of the subject of suicide yet published (Suicide, etc. International Scientific Series, N. Y., 1881).

The result of his researches as to the average of suicides per million of European populations is as follows: Germans of the south and centre, or High Germans, 165; Germans of the north or Low Germans, 150; Scandinavians,

8. "*Dipsomania*" (*morbid propensity for drink*). (*Trunksucht* or *Saufsucht.*)

§ 639. One of the occasional consequences of an indulgence in alcoholic drinks is the periodic occurrence of a violent thirst for

128; Celto-Romans, *i. e.*, French and Belgians, 116; Anglo-Saxons, 70; Magyars, 52; Flemings, 50; Slavs of the North, 42; Fins, 40; Celts, 30; Slavs of the South and Slavonians, 30; Italico-Romans and Latini, 27. Some individual averages are, however, much more extreme. Thus the ratio of suicides per million is over 300 in Saxony and Saxe-Altenburg; while in Ireland it is only 10. The statistics as to the increase of suicides are also given; and from all of these the author concludes that this increase and irregularity are subject to definite ethnic and anthropological laws. These race influences seem, however, to be subordinate to cosmo-natural influences — those of climate, meteorological changes, length of day and night, etc., while they are complicated by social influences. Here Professor Morselli discovers a proportion between insanity and suicide. He cites, moreover, Wagner (*Die Gesetzmässigkeit in den scheinbar willkürlichen, menschlichen Handlungen*, i. pp. 136, 237) to show the influence of free trade, the improvement in the means of communication, as well as of similar and more apparent causes, upon suicide, consequent on the greater distribution of money, which has produced an instability of riches. With these are taken into consideration the influences arising from biological and social conditions of individuals, as well as the determining motives for the act; and an inquiry is also made into the laws regulating the choice of places and methods. The theory to which Professor Morselli is finally led is that suicide is a phenomenon of evolution in civilized societies; that it is the result of the struggle for existence and also for human selection; and that its cure is to be found in the formation of character of a higher type.

It will be noticed that while Professor Morselli constructs his theories by synthetical methods entirely in sympathy with the methods of modern materialists, and his criticisms and analyses are based solely upon absolute facts, in suggesting a remedy he leaves the domain of science, and recognizes a cure which would have been prescribed by the theologian or moral philosopher on ethical principles. The cure, he says, is preventive: it is "*to develop in man the power of well ordering sentiments and ideas by which to reach a certain aim in life; in short, to give force and energy to the moral character.*" That is to say, the most careful, comprehensive, and unbiassed efforts of scientific genius only reaffirm the value of moral training, teaching, and aims. Professor Morselli really leaves the phenomenon of suicide unexplained; and all his research cannot prove the existence of arbitrary laws that regulate this phenomenon, if he admits that their force can be multiplied by the efforts of individual character.

The geographical tables showing the distribution of suicide; the tables showing the proportions as to sex, age, and occupation; as to learning and ignorance — in which connection he maintains that suicide and education advance *pari passu;* and the tables showing the influence of marriage, are well worthy of attention.—T. I. W.

Periodic craving for liquor not an uncommon disease.

intoxicating liquor—a thirst which is not satisfied until the patient has drunk continuously for one, two, or sometimes three days. The passion then subsides, and he remains sober for weeks, until another attack of the disease comes on. Liman[1] tells us, for instance, of an educated young man who was employed by a princely family, who had great confidence in him, as a general manager of their household. He had charge, among other things, of the wine-cellar, and this led to his indulgence in wine, which gradually matured into a passion for strongly alcoholized drinks. About once every three months this seized him as a sort of rage. He would have baskets of wine, white beer, and rum brought to his chamber, in which he would at such times permit visits only from his servant and his physician, and he would drink for days, under the influence of intoxication, until disgust and nausea intervened, and drinking lost its zest. He would then reappear, having been supposed to have been absent on a short journey, or to have been kept at home by sickness, and would then, until a new attack came on him, act with perfect sobriety and self-control. Thus at the table of the prince by whom he was employed he never was suspected of love for drink, and died without the secret being known. "I never can forget," says Dr. Liman, who attended him, "his earnest supplications to me to relieve him from his misery; and I can say that he was at least not wanting in good intentions, as well as in moral disgust at himself." Multitudes of analogous cases are familiar to those who have watched social life in America.

§ 640. But is "dipsomania," or periodical paroxysm for drink, a distinct form of insanity? In other words, are the mind's relations to alcohol such, that a person otherwise sane may be insane as to drink, and consequently irresponsible for drunkenness and its results? Of course these questions are naturally answered in the affirmative by those alienists who treat the mind as a bundle of independent qualities, the derangement of either of which does not involve the derangement of the others. On the other hand,[2] Ideler, a German psy-

But "dipsomania" not a distinct form of insanity.

[1] Liman's Casper, 1871, p. 647. See essays in Proceedings of N. Y. Med. Leg. Soc. (N. Y. 1872), pp. 38, 374.

[2] And see an article in 30 Am. Journ. Ins. 430; see Edinburgh Rev., No. cxxxvi. p. 398.

chological physician of great distinction, treats "dipsomania" as simply a bad habit of self-indulgence; and he adds, if a man is to be irresponsible for the evil consequences of one bad habit, there is no reason why he should not be irresponsible for another. He declares that love for drink, whether this love be constant, or occurring in periodical paroxysms, is conquered by force of will; and he brings in to show this the statistics of temperance societies, showing how frequently drunkards have been reformed. He points to numerous individual cases in which such reforms have been known. And, indeed, as the disease has been in so many cases overcome, the duty of government, instead of establishing a privileged class of drunkards, who, by their emancipation from penal law, would be entitled to indulge in their passion and its consequences without stint, is, it may well be argued, to make drunkenness in any shape a criminal offence, and at the same time provide asylums where habitual drunkards can be reformed.

§ 641. But in addition to this objection to the recognition of "dipsomania" as a distinct moral mania, conferring irresponsibility on those subject to it, it may be noticed that if we allow such a privilege to thirst for alcohol, we must allow it to an almost endless series of other appetites. The passion for opium, taking the world through, is as extensive as that for drink; it is certainly as powerful and as pernicious. That it is capable of being reduced by moral influences (*e. g.* fear of disgrace or punishment) does not distinguish it from dipsomania proper, for in the latter moral means have often a marked effect. Craving for chloroform, we have recently been told, has also become a powerful mania; and we have had detailed to us cases in which this passion is declared to have become "irresistible." Among less cultivated countries passions for particular forms of food become in like manner despotic; and among the Esquimaux this is said to exist in reference to train oil. Even so clear-headed and energetic a prince as Charles V. had so strong a passion for fish, that he persisted in indulging in this appetite, though in so doing, as he was assured by his physicians, he shortened his life, and subjected himself to much bodily pain. If, as is maintained by the classifiers of "monomanias," "dipsomania" has its own cell, then we must have a separate cell for the separate passion for every particular article of food or drink.

Analogy with other appetites.

§ 642. But the truth is that "dipsomania," so far as it distinctively exists, is a physical rather than a moral disease.[1] There is a craving in these patients, for alcoholic drinks, as there is in other cases a craving for opium or for particular articles of food, or for tobacco, or for chloroform; or as there is in another class of cases a craving for restless action, or for self-indulgent repose. But in all these cases, supposing the mind to be sane, the patient's will follows the dictates of his reason. He balances the gratification on the one side, against the evil consequences on the other. If the latter appear to him remote—if he thinks he may indulge *just this once* without being discovered or punished, and then make this indulgence the crisis from which to date a new era of self-restraint—he is apt to seize the gratification. The great point before him, at least in the incipient stages, is, whether the pleasure may be enjoyed with impunity. If it can, it will be enjoyed. Of course, then, in view of the evils to the community of "dipsomania" as a general disease, the law is bound to step in and attach certain penalties to such a dangerous habit. It says, "Drunkenness we make a police offence," and "for crimes committed under excitement or drunkenness, we hold drunkenness to be no defence." It cannot say this, however, with effect, unless it makes good what it says. A law which is not executed ceases to deter. It must be executed if it is to have any effect on the will. The man who is strongly tempted to indulge a passion must feel, "I will be punished if I do this;" but in order that he should feel this, the law must be known to perform what it threatens.[2]

A physical, not a moral disease.

§ 643. "Dipsomania" is here viewed not only singly, but as a type of other appetites for excessive food, drink, and stimulus. These appetites spring from the animal nature, and, if they are yielded to in excess, brutalize him who yields to them, making them the sources of great domestic and sometimes cruel wrong. From the very nature of such indulgences, they are to be controlled chiefly, if not exclusively, by the fear of results. Hence it is that

[1] See an article giving statistics of Influence of Alcohol on Insanity, 18 Journ. Ment. Sci. 443. In this connection may be referred to Alcohol, Its Action and Uses, by Dr. Richardson, London, 1875.

[2] See *supra*, §§ 115, 146, 162, 188, 403. See an article in 3 Quart. Journ. Inebriety, 202.

to such men the greatest mercy is that the law should be firmly expressed. To declare them emancipated from the law on the ground that "dipsomania" is a moral insanity, is cruel to them, as taking away what may be the only barrier between them and ruin. And it is unphilosophical on the grounds already stated. The mind is not divided into a series of compartments, one of which can be insane and the others sane. When there is an insanity of the part, there is insanity of the whole. When there is no insanity of the whole, there is no insanity of a part.[1]

[1] As to "dipsomania" as a legal defence, see *supra*, §§ 190–199; and see, as negativing theory, Choice *v.* State, 31 Georg. 424.

The following is extracted from an article by Dr T. H. Tanner, in the Dublin Medical Press of August 27, 1862, as reprinted in the American Journal of Insanity for October, 1862:—

"Within the last few years the word dipsomania has been coined to express that craving for intoxicating liquors which, according to some physicians, partakes of the character of insanity.

"Now, although a fit of intoxication is undoubtedly an attack of temporary mania, yet it seems to me a highly unphilosophical view (and one, too, which is fraught with the greatest danger to society) to regard a dipsomaniac as an irresponsible being; to look upon him, in fact, as an individual affected by some recognized form of lunacy. Hard drinking is a degrading vice, and, like many other vices, the more freely it is indulged in, the more difficult is its discontinuance. It seems absurd to say that the desire for alcoholic stimulants is a disease—that it is symptomatic of some cerebral condition, unless, indeed, we say the same of every act of wickedness or folly. Not only is the experience of the dead-house against such a view, but, if we set aside this evidence as being of little value, we yet know that there is no difficulty in curing the most inveterate sot, provided that we are but able to deprive him of his poison. The fact is indisputable, that many who drink to excess can be persuaded to abs'ain temporarily, if only a limit to their abstinence be fixed, so that they may enjoy the anticipation of a debauch; while a few can be so influenced that they renounce this habit entirely.

"The drunkard is a nuisance to himself and all who are brought into contact with him; and it is to be regretted that there are no legal means of controlling him until he is cured of his folly.

"The man who attempts suicide by some summary process is liable to imprisonment; while he who slowly poisons himself may proceed to certain destruction with impunity. He may ruin himself and his family, but so that he breaks only moral laws and obligations he cannot be stopped in his downward career. The welfare of society demands some place of detention for such men: and, even if an act of parliament cannot be obtained to sanction the necessary interference with the liberty of these misguided people, yet I believe that there are many who would voluntarily enter and submit to the rules of an institution for the cure of drunkenness.

"Mr. Dickens in his 'American

9. *Fanatico-mania.*

(*a*) *Supernatural or pseudo-supernatural demoniacal possession.*

(*a*[1]) § 644. *À priori improbability of such possession.*—There are periods in the development of society when we may expect supernatural communications. When a new economy is announced, we may look to see it authenticated by miracles. When that economy is inaugurated, we may look for a government by law.

[§ 645 *omitted in this edition as cumulative.*]

(*b*[1]) *Solvability of this evidence by natural tests.*

(*a*[2]) § 646. *Disease.*—The brain, independently of its positive functions, is the centre of nervous sympathy, and "is intimately connected with many other viscera, whose functions cannot be carried on without the assistance derived from this organ, and whose infinitely varied disturbances are all propagated by a reflex action to this common centre." Among the organs by which the brain is thus influenced, the stomach may be particularly mentioned. Observe, as an illustration of this, the way in which tea, coffee, alcohol, and opium act on the brain. Headaches, hypochondriasis, melancholy, here find their origin. Take the ordinary case of hallucination, in which a ghost is seen, or a prophecy heard. Here a morbid state of the stomach, induced, perhaps, by stimulants, perhaps by indigestion, is the direct cause of the phantasm of cases such as these. Dr. Ferrier thus speaks: "It is well known that in certain diseases of the brain, such as delirium and insanity, spectral illusions take place even during the space of many days. But it has not been generally observed that a partial affection of the brain may exist, which renders the patient liable to such imaginary impressions,

Brain influenced by stomach.

Notes' mentions the case of a man who got himself locked up in the Philadelphia prison, so that he might rid himself of his propensity to drink, where he remained in solitary confinement for two years, though he had the power of obtaining his liberty at any moment that he chose to ask for it. Patients have more than once told me that they would gladly submit to any treatment or surveillance; but they have also said that without restraint all else would be useless, for they could not trust themselves."

See for a case of alleged dipsomania, 17 Mouvement Médicale, 494. See an article on Oinomania in the Alienist and Neurologist for October, 1881, by T. L. Wright, M.D., arguing that the only cure for dipsomania is prevention.

either of sight or sound, without disordering his judgment or memory. From this peculiar condition of the sensorium, I conceive that the best-supported stories of apparitions may be completely accounted for."

"When the brain is partially irritated, the patient fancies that he sees spiders crawling over his bedclothes or person, or beholds them covering the walls of his room. If the disease increases, he imagines that persons who are dead or absent flit around his bed, that animals crowd into his apartment, and that all of these apparitions speak to him. These impressions take place even while he is convinced of their fallacy. All this occurs sometimes without any degree of delirium."

This topic, in its psychological relations, is more fully considered under other heads.[1]

(l^2) § 647. *Morbid imitative sympathy.*—Emotions which would not affect us when alone become overpowering when striking us in connection with others. Hysterical symptoms, when not promptly repressed in times of general religious excitement, may in this way become epidemic. Dr. Davidson, in his history of the Presbyterian Church in Kentucky, gives us instances of this. Speaking of a period in East Tennessee, in which these manifestations were very injudiciously encouraged, he tells us that "the subject was instantaneously seized with spasms or convulsions in every muscle, nerve, and tendon. His head was jerked or thrown from side to side with such rapidity that it was impossible to distinguish his visage, and the most lively fears were entertained lest he should dislocate his neck, or dash out his brains. His body partook of the same impulse, and was hurried on by like jerks over every obstacle—fallen trunks of trees, or, in a church, over pews and benches, apparently to the most imminent danger of being bruised and mangled. It was useless to attempt to hold or restrain him, and the paroxysm was permitted gradually to exhaust itself. An additional motive for leaving him to himself was the superstitious notion that all attempt at restraint was resisting the Spirit of God."[2]

Hysterical emotions often become epidemic.

[1] *Supra*, § 529; *infra*, §§ 723–743.

[2] An "epidemic of witchcraft" is reported as having occurred in Butler, Pennsylvania, in 1881, "when the fact was revealed that there were six professional 'witch masters' in the county, and that when the devil got possession of a man and was not disturbed in his

§ 648. Most of the supposed cases of supernatural possession fall under this head. Take, in addition to the above, the following,

tenancy for two months, five dollars was the smallest sum for which he could be evicted. The modus operandi is to cut a circle on a white-oak tree and lure the devil to enter it, which he does with a noise like thunder and a vehemence that splits the tree to splinters. The patient is then corked up, as it were, with prayers and charms. A case of bigamy at Eden, New York, in March last, showed that an old man named Benedict Smith had convinced a woman and her three daughters that they were possessed, and that he alone could cure them, the cure involving their marriage to him.

"The case of Catharine Sylvia, at New Bedford, in March, 1881, proved a humbug, but was none the less interesting because of the enthusiasm with which the people accepted the theory that the girl was a witch; and it is only a little while since the Davenport, Iowa, papers chronicled the death of Mary the Witch, and gave an appetizing inventory of her professional possessions, her 'cabinet' containing a cat's skull, a chicken's head, bats' wings, toads' feet, spiders' webs, various bones of various animals, dried blood, and eyes of owls and cats deposited in various places wrapped in paper. Leaving out of the question the Voudoo priestesses and the spiritualist mediums, it is safe to say that the professors of witchcraft in the United States are numbered by hundreds, and derive an annual revenue from the credulous which would take at least seven figures to express.

"Though witchcraft is not so public and profitable a business in England, the belief in witches is even more generally held. Within the last few weeks one case has been reported where the parson of the parish was appealed to to cut a sod from the alleged witch's grave to stop her nightly promenades for evil purposes, and two young men were brought before the courts for knocking down an old woman and 'drawing blood' from her with a knife, so as to release their sister from her spells. At Sheffield, in November, 1880, Agnes Johnstone was sent to jail for three weeks for obtaining £5 8s. from Margaret Devaney, through a promise of 'ruling her planet' and bringing her a fortune through the agency of subterranean spirits. The witch had, her dupe testified, danced with the fairies and worked with the devil for night after night.

"At East Dereham one William Bulwer was fined for abusing and assaulting a girl named Christiana Martins because she was a partner in the witch business with her mother, his testimony being as follows: 'Mrs. Martins is an old witch, and she charmed me, and I got no sleep for her for three nights, and one night at half-past eleven o'clock I got up because I could not sleep, and went out and found a "walking toad" under a clod that had been dug up with a three-pronged fork. That is why I could not rest. She is a bad old woman. She put this toad under there to charm me, and her daughter is just as bad, gentlemen. She would bewitch any one. She charmed me, and I got no rest day or night till I found this 'walking toad' under the turf. I got the toad out and put it under a cloth and took it up stairs and showed it to my mother, and 'throwed' it into the pit in the garden. I can bring it and show it to you, gentlemen.'"—*Philadelphia Inquirer*, Feb. 22, 1882.

Most cases of supernatural possession really hysterical.

which occurred in Kentucky in the movements of 1810–15. A man who was undoubtedly deranged, and who had in early life been a bold and enthusiastic hunter in the wilderness of which Western Kentucky was composed, became deeply impressed with a religious enthusiasm which exhibited itself in the same way that all his other impulses exhibited themselves—through the mechanism of the hunting mania. He became a sort of fanatical Der Freyschutz. In order to resist the devil and make him flee, he contended that it was necessary to tree him, and to give him chase, just as we would a wolf whom we found prowling among our sheep. As the meetings he convoked were held in a grove, one of the congregation would suddenly start in pursuit of the devil, an exercise in which a number of others equally excitable would immediately join. This was called the "*running exercise*," and became the first stage in the series of movements by which the meetings were afterwards made memorable. Climbing a tree after the devil was the next movement, which was called the "*climbing exercise.*" In the ecstasy of the moment, one individual was seized with a propensity to bark, a movement to which the rest were irresistibly impelled, though they used every effort to check the propensity. This exercise, which was called "*treeing the devil*," was accompanied with such a scene of barking and jumping as to destroy any remaining appearance of reason. The epidemic spread to other fields than that of demon-hunting. On one occasion one individual was seized with an insane propensity to play marbles during divine service, when others involuntarily joined him. And so far did the mania extend, that a series of other juvenile games were introduced and followed with the same irresistible vehemence by the congregation. Absurd as this may appear, the epidemic lasted for some months, and its history has now passed into the records of our western states as part of the materials on which the annals of western immigration will rest.

Instances of morbid epidemics.

§ 649. In connection with this, may be noticed the recognized effect of a mania of the *imitative* powers, as exhibited in the *tarantula* of Apulia, and the exercises of the Jumpers of Cornwall and the *convulsionnaires* of the Parisian miracles.

"In 1556," says Dr. Kellogg, "a number of children, brought up in the city of Amsterdam—girls as well as boys—to the number

of sixty or seventy, were attacked with an extraordinary disease. They climbed like cats on the walls and roofs. Their aspect was alarming, they spoke foreign languages, said wonderful things, and even gave an account of all that was passing in the municipal council. They ran in groups of ten or twelve through the public squares, went to the rector, and reproached him with his most secret actions. It is also asserted that they discovered several plots against the Protestants; and the faculty of prophesying, foretelling the future, and speaking in foreign languages, appeared really to exist in this epidemic."

"With our present amount of knowledge," says Dr. Winslow, speaking of imitative or epidemic suicide, "of the subtle principle of contagion, it is difficult to say whether an effluvium may not be generated in such cases, which, under certain conditions of the system, may communicate disease. We cannot possibly say that such is not the case," he adds, "though we are by no means willing to admit that the disposition to suicide may be propagated by contagion—using the term in its usual acceptation."

"A man once hung himself, on one of the doors of the corridor at the *Hôtel des Invalides*. For two years previous no suicide had occurred, but in the succeeding fortnight *five* invalids hung themselves on the same cross-bar, and the passage had to be closed. In one of the Berlin hospitals, some fifty years since, a young woman of robust frame visited one of the patients. On entering the ward, she fell down in strong convulsions. Six female patients who saw her became at once convulsed in the same way, and, by degrees, *eight* others passed into the same condition for four months, during which time four nurses followed their example. They were all between sixteen and twenty-five years of age. Some years since, in one of our popular boarding-schools for young ladies, a pupil became affected by chorea. Her contortions being perceived by the school, this case was soon followed by another, and still another, until the disease became regularly epidemic. A judicious physician being called in proposed that cauterization by a red-hot iron should be applied to the next case which occurred; this prescription became generally known through the school; no more cases occurred. In the olden time, the ladies of Miletus, in a fit of melancholy for the absence of their husbands and lovers, resolved to hang themselves, and, as in all fashionable amusements, vied with each

other in the alacrity with which they carried on their work of self-destruction. Sydenham informs us that at Mansfield, in the month of June, suicide prevailed to an alarming degree, from causes wholly unknown. The same thing happened at Rouen in 1806, at Stuttgart in 1811, and at a village of St. Pierre Montjean in the year 1813. One of the most marked suicidal epidemics was that which prevailed at Versailles in the year 1793: in one year the number of suicides was thirteen hundred—a number entirely out of proportion to the population."

§ 650. A suicidal epidemic prevailed at the New York State Lunatic Asylum in July, 1851, and is alluded to by Dr. Benedict in his report for that year. "Out of four hundred and sixteen patients, at that time in the institution, the suicidal propensity existed in sixty-six. The first successful attempt was made on the 12th of July, by a female of the most intelligent class. Her melancholy end became known to her companions, with whom she was a favorite, and on the following day two others in the same hall were overheard devising a plan for their own death. The large number of forty-four patients were admitted during the month of July, nineteen of whom were suicidal. Two patients, who had long been in the house, and never manifested suicidal propensities, attempted it during this month, *though they had no knowledge of what had occurred in another part of the building.*"[1]

(c^2) § 651. *Legerdemain and fraud.*—Dr. Monsey, who was the medical adviser of Garrick, was called upon to pay a professional visit to that great actor. "Garrick," as his biographer, Taylor, tells us, "was announced for King Lear on that night, and when Monsey saw him in bed he expressed his surprise, and asked him if the play was to be changed. Garrick was dressed, but had his nightcap on, and the quilt was drawn over him to give him the appearance of being too ill to rise. Dr. M. expressed his surprise, as it was time for Garrick to be at the theatre to dress for King Lear. Garrick, in a languid and whining tone, told him that he was too much indisposed to perform himself, but that there was an actor named Marr, so like him in figure, face, and voice, and so admirable a mimic, that he had ventured to trust the part to him, and

Apparently inexplicable occurrences often mere deception.

[1] Kellogg on Reciprocal Influence of Mind and Body.

was sure that the audience would not perceive the difference. Pretending that he began to feel worse, he requested Monsey to leave the room in order that he might get a little sleep, but desired him to attend the theatre, and let him know the result. As soon as the doctor quitted the room, Garrick jumped out of bed, and hastened to the theatre. Monsey attended the performance. Having left Garrick in bed, he was bewildered by the scene before him, sometimes doubting, and sometimes being astonished at the resemblance between Garrick and Marr. At length, finding that the audience were convinced of Garrick's identity, Monsey began to suspect a trick had been practised upon him, and instantly hurried to Garrick's house at the end of the play; but Garrick was too quick for him, and was found by Monsey in the same state of illness."

So in supposed supernaturalism.

§ 652. A writer in the *London Christian Observer*, for 1812, tells us that in the middle of the last century a small club of convivial personages was assembled at supper in Manchester. A chair at the bottom of the table was left empty by the absence of a member who was known to be at the time confined upon a dying bed. The waiters had quitted the room, and the members were speaking of their dying friend, when on a sudden the door opened, and his apparition, as was supposed, entered, shrouded in white, and pale and ghastly as an inhabitant of the tomb. It stalked to the unoccupied chair, sat down, looked around upon the company, rose again, and with slow and solemn step quitted the room. Overcome with awe, ill-prepared by their habits of life to resist the terrors of superstition, no one followed him. When all was over, however, they sent to the house of the sick man, and learned from the nurse that he had died a few minutes *before* they had seen his apparition. Could a ghost-story be more strongly authenticated? and could it be wondered at that the club should be dissolved, and that each member should thenceforward remain a firm believer in spectral appearances? Thus matters continued for nearly ten years, when the nurse, on her dying bed, confessed to the clergyman of the parish that her fear of discredit for an act of negligence had led to this misapprehension of the facts of the case. She confessed that, while the dying man was in a paroxysm of fever, she had quitted his chamber; that on her return, a few minutes after, she found that, with the strength

not unusually attendant upon the last moments of life, he had fled, but that after a few minutes he returned with his sheet wrapped around him, lay down in his bed and died. The fact seems to have been that, by force of custom, he had thought of his club at the appointed day and hour, had crossed the street to the club-door, which joined the street, and thus terrified the society.

So also the following, given in the same journal. It was the object, some fifty odd years ago, of a certain party in the kingdom of Prussia to separate the successor of Frederick the Great of Prussia from the interests of that wary and ambitious prince. Weary of the wars in which he engaged the country, these persons were desirous of robbing him not merely of his throne, but of his life. It chanced, however, that the young prince was not to be seduced, except by a peculiar process, to any such nefarious attempt. He was neither ambitious nor sanguinary; and, unless when stimulated by peculiar feelings, was of a cold and phlegmatic temperament. When once, however, those feelings were aroused, his ardor became very great. He was superstitious, credulous, and sensual. On these yielding points of his nature, then, the conspirators resolved to practise. Accordingly, jugglers of all sorts were set to work, and among others an infamous fellow of the name of Gustfragog. The "Ghost Seer" of Schiller gives an accurate picture of one of the scenes exhibited to the prince, and by which even a firmer mind than his might have been deeply affected. It is unnecessary to state the political result of the plan. It is more to our present purpose to add, that its partial social success assisted to diffuse a taste for necromancy over the nation. "Tricks," is the summary of this by the writer in the *Christian Observer*, "were devised and executed, which serve to illustrate and confirm the opinion, that in all ages much of what has been referred to spectral appearances has far more connection with the living than the dead. Gustfragog, in the presence of the narrator above mentioned, produced the shades of the dead, invisible music, called out voices from the dead walls, in short, made matter loquacious, music philosophical, at his pleasure."

A case of this class was told by the late Washington Allston. A student at Cambridge dressed himself up in white as a ghost to frighten his companion, having first drawn the bullets from pistols which he kept at the head of his bed. As the apparition glided by

his bed, the youth laughed and cried out, "Vanish, I fear you not." The ghost did not obey him, and at length he reached a pistol and fired it, when, seeing the ghost immovable, and invulnerable as he supposed, a belief in a spirit instantly came over his mind, and, convulsions succeeding, his extreme terror was soon followed by death.

§ 653. Predictions, accompanied by ghostly horrors such as this, often bring about their own fulfilment. Dr. Rush told a story of a farmer, near Philadelphia, who took the yellow fever upon hearing from a party of medical students, who wanted to play a practical joke upon him, that he displayed the premonitory symptoms of that disease. Suppose the communication had been made to him under the mask of a simulated apparition, and suppose the imposition had remained undetected, would we not have had a ghost story equal in authentication to the strongest which modern supernaturalism can present?

(d^2) § 654. *Mistake of senses.*—Mr. Dendy, in his Philosophy of Mystery, tells us that a few days after the death of Marshal Ney, a servant, ushering the Mareschal Ainé into a Parisian *soirée*, announced by mistake Mons. Le Mareschal Ney. Instantaneously, says the narrator, the form of the Prince of Moskeva was before his eye.

Supposed apparitions often due to mistake of senses.

Now here was an apparition produced by mental association. No one accustomed to the examination of testimony in courts of justice, but will recollect many similar cases.

Visual mistakes find their place here. Thus Lord Nelson's sailors conjured up the bloated corpse of the murdered Prince Caraccioli, as it floated erect towards their ship, as a ghost fraught with supernatural warning.

A lady was some years back attending a sick husband in a little town on the Hudson River. The windows of the room they occupied looked directly down on the graveyard. Towards midnight, on Saturday, the disease of the sick man approached a crisis, and his wife was earnestly praying for his recovery. Suddenly she saw in the graveyard a spectral figure in white robes, apparently waving its arms to her as if with a gesture of assent. She called to it the attention of the nurse, who fainted. It seemed as if the sick man at once began to recover, but the wife was too much overawed to be willing to remain in a neighborhood open to such apparitions. She

was about to remove, when the difficulty was solved by the following account given to her by her washerwoman: "I am obliged to move also, for I have no place to dry my clothes. Last week we were forced to hang them in the churchyard, and then I forgot them, and had to run in towards midnight to catch them up in my arms, so as to keep them from being seen on Sunday morning."

Mr. Dendy tells us of a farmer of Teviotdale, who in the gloom of evening saw on the wall of a cemetery a pale form throwing about her arms and moving and chattering to the moon. With not a little terror, he spurred his horse, but as he passed the phantom it dropped from its perch, and, fixing itself on the croup, clasped him tightly round the waist. He arrived at home, with a thrill of horror exclaimed, "Tak aff the ghaist!" and was carried shivering to bed. And what was the phantom? A maniac widow on her distracted pilgrimage to the grave of her husband, for whom she had mistaken the ill-fated farmer.

The supernatural scenery which once surrounded Lake Superior may fall under this head. Spectre ships, propelled by giant sailors, were seen on its shores. Bluffs, almost mountain high, lifted their brows covered with trees of mammoth height. But the ships were Indian canoes, and the bluffs low ridges of sand covered with scrubby pines. The exaggerated size was produced by a peculiar refractive power of the atmosphere.

§ 655. Observe, also, the solution of the Giant of the Brocken, as given by M. Haue.

Or optical delusions.

"After having been here for the thirtieth time, and, besides other objects of my attention, having procured information respecting the above-mentioned atmospheric phenomenon, I was at length so fortunate as to have the pleasure of seeing it; and perhaps my description may afford satisfaction to others who visit Brocken through curiosity. The sun rose about four o'clock, and, the atmosphere being quite serene towards the east, his rays could pass without any obstruction over the Heinrichshöhe. In the southwest, however, towards the Achtermannshöhe, a brisk west wind carried before it their transparent vapors, which were not yet condensed into thick, heavy clouds. About a quarter past four I went towards the inn, and looked around to see if the atmosphere would permit me to have a free prospect to the southwest; when I observed, at a very great distance towards the Achtermannshöhe,

a human figure of a monstrous size. A violent gust of wind having almost carried away my hat, I clapped my hand to it by moving my arm towards my head, and the colossal figure did the same. The pleasure I felt on this discovery can hardly be described; for I had already walked many a weary step in the hope of seeing this shadowy image, without being able to satisfy my curiosity. I immediately made another movement by bending my body, and the colossal figure before me repeated it. I was desirous of doing the same thing once more, but my colossus had vanished. I remained in the same position, waiting to see whether it would return, and in a few minutes it again made its appearance in the Achtermannshöhe. I paid my respects to it a second time, and it did the same to me. I then called the landlord of the Brocken; and, having both taken the same position which I had taken alone, we looked towards the Achtermannshöhe, but saw nothing. We had not, however, stood long when two such colossal figures were formed over the above eminence, which repeated our compliments by bending their bodies as we did; after which they vanished. We retained our position, kept our eyes fixed upon the same spot, and in a little while the two figures again stood before us. Every movement that we made by bending our bodies these figures imitated, but with this difference, that the phenomenon was sometimes weak and faint, sometimes strong and well defined. Having thus had an opportunity of discovering the whole secret of this phenomenon, I can give the following information to such of my readers as may be desirous of seeing it themselves. When the rising sun throws his rays over the Brocken upon the body of a man standing opposite to fine light clouds floating around or hovering past him, he needs only fix his eye steadfastly upon them, and in all probability he will see the singular spectacle of his own shadow extending to the length of five or six hundred feet, at the distance of about two miles from him. This is one of the most agreeable phenomena I ever had an opportunity of remarking on the great uplands of Germany."

A throng of persons collecting at a given spot, and gazing intently at any specific object, will readily be affected by a delusion concerning it. Mr. Dendy tells us that some time since a very large assemblage was watching with intense interest the stone lion of the Percies at Northumberland House. They were unanimous in the conviction that he was swinging his tail to and fro—a false

impression, of course, which had gradually accumulated from this solitary exclamation of a passenger: "By heaven, he wags his tail!" Of this sort of illusion we are given the following additional instance: Beneath the western portico of St. Paul's a crowd of gazers were some time since bending their eyes on the image of a saint, who was nodding at them with a very gracious affability. Curiosity had risen to the pitch of wonder at a miracle, when suddenly a sparrow-hawk flew from the ringlets of the saint, and the illusion vanished.

(e^2) § 656. *Guesswork.*—First, as to dreams. Now, in the millions of dreams that each night brings to pass, it is much more likely that *some* should come true than that *none* should. But there are independent circumstances tending to verify such predictions.[1]

Knowledge attributed to dreams probably procured from other sources.

"If you do so and so, you will rue it." So speaks superior sagacity or superior caution; but does the fulfilment prove the foreknowledge? Columbus predicted to the Indians an eclipse. In this case the prediction was the result of a higher degree of knowledge on his part. An Earl of Caithness, we are told, was desirous of ascertaining the distance of a vessel laden with wine for his cellars. He went to a seer, and received the answer, "At the distance of four hours' sail." The prophet, to prove the truth of his statement, laid before the earl the cap of a seaman in the ship. Soon the ship turned the point, and a seaman claimed the cap, saying that shortly before it had been blown from his head in a gale.

Sometimes, however, the prediction is one of a series of mere fishing adventures. It is a conjecture, more or less sagacious, of one of a number of probabilities. So it was when Napoleon, when marching to Acre, had a Nile boat named *L'Italie* destroyed. "Italy is lost to France," he declared; and the remark, when the result was found to have taken place, was treasured up, though it turned out to be only parenthetically true. So it was with the warning given by Lord Falkland and Archbishop Williams of the fate of Charles I. So it was with the famous prophesies of Cazotte, of the decapitation of himself and his friends. In

[1] See La Sommeil et les Rêves, Alfred Maury. Paris, 1865.

each case the prophecy was a conjecture, and the event at the time probable.

Then come the mere dodging oracles, which are framed so as to read both ways.

"The power is here which Cæsar will overcome," leaving the question, whether it is Cæsar or the power which is to be triumphant, to be determined by the result.

Then take the following, given Pyrrhus on his way to attack Rome:—

"Aio te Æacida Romanos te vincere posse," meaning either that Rome was to conquer him, or he conquer Rome.

Alexander the Great, in the first gush of his youthful vigor, visited the Delphic pythoness in order to obtain a favorable omen for his eastern campaign. The priestess shrank from an interview with a prince at once so capricious and so powerful. Alexander, however, would take no refusal, and, seizing her, forced her down upon the tripod from which her prophetic strains usually emanated. An operation like this, when we keep in mind the age of the prophetess, and the sharp, jutting points of the tripod on which she was thus trussed, could not have been agreeable to her; nor can we be surprised that she cried out testily, "O son! who can withstand thee?" Alexander inquired no further, for this pettish cry was seized by him as a divine announcement of his future invincibility.

Supernatural presentiment often an awakening of memory.

§ 657. To this may be added those instances in which an apparently supernatural presentiment is produced by the resuscitation of a dead recollection. Let us take the following from Moreton's Essay on Apparitions: "The Reverend Dr. Scott, of Broad Street, was sitting alone in his study. On a sudden, the phantom of an old gentleman, dressed in a black velvet gown and full-bottom wig, entered and sat himself down in a chair opposite to the doctor. The visitor informed him of a dilemma in which his grandson, who lived in the west country, was placed by the suit of his nephew for the recovery of an estate. This suit would be successful, unless a deed of conveyance was found which had been hidden in an old chest in the loft of the house. On his arrival at this house, he learned that his grandson had dreamed of this visit, and that his grandfather was coming to aid him in the search. The deed

was found in the false bottom of the old chest, as the vision had promised."

Now, the solution no doubt is, that the dreamer heard of the place of deposit when a boy, and the circumstance was recalled to him by the fact of the pending trial.

The same explanation applies to the following cases:—

After the death of Dante, as we are told by the same author, it was discovered that the thirteenth canto of the *Paradise* was missing. Great search was made for it, but in vain; and to the regret of every body concerned, it was at length concluded that it had either never been written, or had been destroyed. The quest was therefore given up, and some months had elapsed, when Pietro Allighieri, his son, dreamed that his father had appeared to him and told him, that, if he removed a certain panel near the window of the room in which he had been accustomed to write, the thirteenth canto would be found. Pietro told his dream, and was laughed at, of course. However, as the canto did not turn up, it was thought as well to examine the spot indicated in the dream. The panel was removed, and there lay the missing canto behind it, much mildewed, but fortunately still legible.

A gentleman in this country received a promissory note to a large amount, which he placed in a book. After the note became due, he was unable to recollect where he had placed it, and the debt was in danger of being lost, and his character seriously injured, as one who was ready to press a claim for which he had no evidence. The fact caused him great anxiety, but his efforts to recollect the place of deposit were fruitless. Some time afterwards he was almost drowned, and became apparently insensible. When in this state, all the circumstances of the deposit flashed upon his mind, and the spot where he had placed the note was recalled. When he was able to speak, he sent for the book, and there the note was found.

§ 658. Sir Evan Nepean, being at the time secretary of the admiralty, found himself one night unable to sleep, and was urged by an indefinable feeling that he must rise, though it was then only two o'clock. He accordingly did so, and went into the park, and from that to the Home Office, which he entered by a private door, of which he had the key. He had no object in doing this; and, to pass the time, he

Memory independent of corporeal conditions.

took up a newspaper that was lying on the table, and there read a paragraph to the effect that a reprieve had been dispatched to York for certain men condemned for coining. The question occurred to him, was it indeed dispatched? He examined the books, and found it was not; and it was only by the most energetic proceedings that the order was forwarded and reached York in time to save the men.

Mrs. Crowe, in her "Night Side of Nature," tells us of a case that occurred not many years since, where, a murder having been committed, a man came forward, saying that he had dreamed that the pack of the murdered peddler was hidden in a certain spot, where, on a search being made, it was actually found. The police at first concluded that he was himself the assassin, but the real criminal was afterwards discovered; and, it being asserted that the two men had passed some time together since the murder, in a state of intoxication, the conclusion was generally reached that the crime and the place of concealment had been communicated to the pretended dreamer in such a way, in consequence of his then drunkenness, as to leave a vague impression on his mind, without enabling him to understand how that impression came.

Now, here we have in each case a solution perfectly in accordance with well-known psychological laws. The soul, of which memory is an attribute, is independent of corporeal conditions, and is unshackled by those bonds which confine even the will. It is this, we may remark incidentally, which invests the memory with such tremendous future retributive powers.

(*f*²) § 659. *Natural phenomena at present inexplicable.*—Under this head we may place such remarkable occurrences as the "ecstasies" of Louise Lateau and of Alexandrine Lanoix, as reported by Dr. Meredith Clymer, in his valuable "Notes on Ecstasy and other Dramatic Disorders of the Nervous System."[1]

Such are "ecstasies" and magnetic phenomena.

[1] 4 Journ. Psyc. Med. 659.

"The perusal of Dr. Meredith Clymer's interesting paper, 'On the Dramatic Diseases of the Nervous System,'" writes George E. Day in the same journal for 1871, p. 288, led "me to write Dr. Lefebvre, Professor of General Pathology and Therapeutics in the Catholic University of Louvain, to ask for further and later details regarding the case of Louise Lateau.

"In reply to my letter, he forwarded me a complete work, which he has recently published, entitled 'Louise

With this may be classed the so-called "Odyllic Force of Magnetism." It is true that some of these phenomena may be explained in accordance with well-known natural analogies. They differ in no respect from a series of other phenomena equally inexplicable, but for which it has never been thought necessary to suppose direct Satanic or spiritual coercion. The strongest way of stating the magnetic theory is, that one human being is able, under certain circumstances, to so impress his idiosyncrasies upon another as to produce in that other their counterparts. Suppose, instead of this, it should be stated that a *dog* is able to so act upon a human being as after a certain period of time to impress *his* idiosyncrasies upon the man, to cause him to bark like a dog, to believe himself a dog, in fact, to respond to the dog's nature. Nothing in animal magnetism is stranger than this, and yet this horrible and mysterious transformation we witness in the phenomenon of hydrophobia, and what is more, we rest satisfied with the fact without attempting to explain it supernaturally, though the process by which this extraordinary infusion of one nature into another is effected is utterly inexplicable. And again, we see that the sun, itself an unintelligent agent, is able so to act upon a silver plate as to stamp in a flash the portrait of an immediate object—say a human face—upon the inanimate metal. Is this more strange than that the passionate and flexible spirit of man, impregnated as it is with so many wonderful energies which we have never been able to test, should project on the soul of its fellow at least some sort of portrait of itself? Do we not see this constantly in social life, at least to some modified extent? Have we

Lateau de Bois d'Hiane: sa vie—ses extases—ses stigmates. Etude Médicale, par le Dr. F. Lefebvre, pp. 360: Louvain, 1870.' The mode of arrangement of the volume is as follows: In the first part he gives a short biography of the young woman; in the second, he enters into the details of her case; in the third, he discusses the hypothesis of there being any fraud or imposition practised; while the fourth and concluding part, which occupies more than three-quarters of the whole book, is devoted to the medical study of the facts.

"He devotes eighty pages to the subject of stigmatization, and a hundred to that of ecstasy. The author of this curious volume is deserving of the highest praise for the conscientious care with which he has investigated this almost incredible case. I may conclude by stating that he informs me that he last saw his patient on the 13th of January, 1871, and that she continued in precisely the same state (*toujours le même*)."

been able as yet to systematize and define the transforming influences of human affection or fear?

The most cautious psychologists maintain that phenomena such as these, or similar to these, are explicable on natural grounds. Thus, in Sir William Hamilton's edition of Reid, we find the following passage:—

"No man can show it to be impossible to the Supreme Being to have given us the power of perceiving external objects without any such organs;" that is, our organs of sense. "We have reason to believe that when we put off these bodies, and all the organs belonging to them, our perceptive powers shall rather be improved than destroyed or impaired. We have reason to believe that the Supreme Being perceives everything in a more perfect manner than we do, without bodily organs. We have reason to believe that there are other created beings endowed with powers of perception more perfect and more extensive than ours, without any such organs as we find necessary."

To this Sir William Hamilton adds the following note:—

"However astonishing, it is now proved beyond all rational doubt, that, in certain abnormal states of the nervous organism, perceptions are possible through other than the ordinary channels of the sense."[1]

(c^1) § 660. *Historical evidence of such possession.*—We come next to the question whether we have evidence from history that there has ever been such a systematic deviation from the Divine policy as is implied by the entrance of specific evil spirits into specific human bodies, followed by a supernatural subjection of the will if not by a merging of the individuality of the latter in the former. There is little doubt that this was taught by the ancient philosophers. Plato unites in expressly asserting the existence of demons, who, on his theory, are the sole supernatural agencies by which the Divine will operates on the human heart. Πᾶν τὸ δαιμόνιον μεταξύ ἐστι θεοῦ τε καὶ θνητοῦ. And again Ερμηνεῦον καὶ διαπορθμεῦον θεοις τὰ παρ' ἀνθρώπων, καὶ ἀνθρώποις τὰ παρὰ θεῶν, τῶν μὲν τὰς δεήσεις καὶ θυσίας, τῶν δὲ τὰς ἐπιτάξεις

Belief in demonology taught by ancient philosophers.

[1] See Physics and Physiology of Spiritualism, by W. A. Hammond, M.D.: New York, D. Appleton & Co., 1871. Spiritualism and Animal Magnetism, by G. G. Zerffi, London, 1871.

τε καὶ ἀμοιβὰς τῶν θυσιῶν.[1] He tells us that demoniacs do not use their own dialect or tongue, but that of the demons who have entered into them.[2] Lucian declares "the *patient* is silent: the demon returns the answer to the question asked." And yet at the same time it would seem that the possibility of the cure of the demoniacs by medicine was recognized, which would scarcely be the case if the malady was regarded as exclusively supernatural. Thus we are told, "Helleboro quoque purgatur *lymphaticus* error."[3] And Josephus and the Jewish physicians speak of medicines composed of stones, roots, and herbs, being useful to demoniacs.[4]

Conflict of opinion as to authority of New Testament on the subject.

§ 661. With regard to the New Testament history, two views have been taken, each of which has the sanction of authorities distinguished both for learning and for loyalty to the Christian cause. On the one hand, it is urged that the language of the Gospel writers is express to the very point; on the other, it is maintained that the accounts given by them may all be understood as exhibiting no more than the phenomena of certain diseases, particularly hypochondria, mania, and epilepsy; that the *popular* terms were used to describe these diseases, just in the same way that "Possession" (Besessenheit) is now used by some of the most technical German psychologists to describe the same thing; and that the sacred penmen meant to convey no more than that the patients were affected with the complaints which those phrases described.[5]

[1] Plato, Sympos., pp. 202, 203. Lipsiæ, 1829, p. 252. See also Plutarch, De Defect. Orac. Farmer's Essay on the Demoniacs.

[2] Plato, *apud* Clem. Alex. Strom. I. 405, Oxon.

[3] Seren. Sammon, c. 27, v. 507.

[4] Gittei, f. 67.

[5] The student is referred to a very comprehensive article on this point, by the Rev. J. F. Denham, of St. John's College, Cambridge, in Kitto's Bib. Cyc., tit. Demoniacs, in which the arguments on both sides are very fairly exhibited; to Farmer's Essay on the Demoniacs; to Jahn's Biblisches Archäologie; to Archbishop Whateley's Lectures on Good and Evil Angels; to Winer's Biblisches Real Wörtenbuch, art. "Besessene;" to Moses Stuart's sketches of Angelogy, in Bibliotheca Sacra, 1843; to Bishop Burgess' sermon on Demonology, in the Phil. course of Lectures on Evidences, Phil. 1854; to President's Appleton's discourse on the same; and to a very brilliant though eccentric treatise, published under the title of "The Apocatastasis, or Progress Backwards," Burlington, Vt., 1854. See also "Physiology of Soul and Instinct," by Dr. Martyn Paine, New York, 1872. See an article by R. W. Emerson, North American Rev., No. 124, p. 179.

§ 661 *a*. But without any further attempt to determine the question whether demoniac possession is taught as a fact by history, either sacred or profane, we revert to the inquiry as to whether it exists at the present day. And the analysis we have just given of the phenomena on which such possession now rests, justifies us in saying, that in a lego-psychological view, we have no evidence of any such present existence. All modern phenomena can be satisfied by the recognition of the independent existence of that species of mania which causes an insane belief in the patient that he is possessed with a demon.[1]

Demoniac possession does not now exist.

Where insanity is substantively proved, then supposed supernatural direction to commit an offence is a defence to an indictment. It is otherwise, however, where the defendant is sane, for the sane are responsible for the rightfulness of their conclusions, so far as these conclusions exhibit themselves in overt acts.[2]

(*b*) *Religious insanity.*

(*a*[1]) § 662. *Christianity, taken in its practical sense, has no tendency to produce insanity.*—"To tell a man he cannot save himself, but that if he trust in God, God will save him"—we paraphrase a passage from Coleridge—"is the lamb in wolf's

[1] Schürmayer, Gericht. Med. § 550. And see Essays on Derangement in connection with Religion, by John Cheyne, M.D., F.R.S.E., M.R.I.A., Physician-General to His Majesty's Forces in Ireland: Dublin, 1843, p. 68, etc. On the subject of demoniacs generally, Whateley's Good and Evil Angels, Lecture VI. For a case of supposed Demoniacal Possession, see Journal of Psychological Medicine, vol. iii. p. 262; Metzger's verm. Schrift. Bd. 3, s. 217; Ces. Ruggieri's history of the self-crucifixion of M. Lovati, at Venice, translated by Schlegel, Rudolst, 1807. (In the latter case, the patient first cut off his own private members, and then crucified himself.) Henke's Zeitsch. E.-H., 11s. 291. (Two Swiss girls, who immolated themselves.) Henke's Zeitschr. Bd. 47, p. 447. (Pyl's essay, 6 Samml. p. 214. (Infanticide by a demoniac.) Henke's Zeitschr. 27 Bd. p. 330 (Periodical Demonio-mania). Demoniacal possession, as Siebold (Gericht. Med. § 210) very justly remarks, was much more common in former days than the present, and of this, to say nothing of the New Testament period, illustrations may be found in the many cases of witches, seers, and soothsayers of the middle ages. The Convulsions, etc., of St. Medard fall under this head. See Hecker on the Dancing Mania, Berl. 1832. Published also by the Sydenham Society. And also a series of very curious and valuable articles on Pythonic and Demoniac Possession, in Dublin Univ. Mag. for Sept. and Oct. 1848, for March and Dec. 1849, and for January, 1850.

[2] *Supra*, §§ 146–162.

clothing; to tell him that he can save himself without help is the wolf in lamb's clothing." The first is mercy in a dress of severity; the second cruelty in a dress of mercy. "Only try," says the philosopher, "trust in yourself, and you will conquer this evil habit." "But I *have* tried—I have trusted in myself—I have failed, and I know that if I am to be judged by my works, I will be condemned." "Only try," says Christianity; "throw yourself for mercy on Christ—He will supply all your wants, will make up all your deficiencies, and will save you in the end, if you but give a childlike faith to Him." Now, which of these two doctrines is the least likely to agitate the mind—that which thus offers immediate pardon and future peace on the sole condition of present repentance and trust, or that which makes salvation dependent on a calculation of the sins and the good deeds of the past—which makes it necessary, before a sure conclusion be reached, that the most secret recesses of memory be searched—and which after all leaves the inquirer with a crushing consciousness of an evil nature which infuses sin into his very thoughts, and for which there is neither atonement nor cure?

The moral bearing of this question is thus stated by Sir James Macintosh: "The enormities of Tetzel found Luther busied in the contemplation of the principle which is the basis of all ethical judgment, and by the power of which he struck a mortal blow at superstition. Men are not made righteous by performing certain actions which are externally good; but men must have righteous principles in the first place, and then they will not fail to perform virtuous actions." "The general terms he used, enunciate a proposition equally certain and sublime, the basis of all pure ethics, the cement of the eternal alliance between morality and religion, and the badge of the independence of both of the low notions and dim insight of human laws."

§ 663. "But predestination?" There is no doubt, that, if the doctrine of predestination be unduly dwelt upon, it may injuriously affect the brain; but this is not a *religious* difficulty. Predestination operates as effectively on things temporal as on things spiritual. The loss of a friend, the purchase of a house, my going on a journey to-morrow, my taking a book this next moment from the library by my side, are as much the matters of foreordination as are the great

conditions of the future. If religion be abandoned because it involves such speculations, so must all human thought whatever.[1]

Philosophical necessity and libertarianism, neither inconsistent with reason.

§ 664. Reducing the controversy within its proper limits, the contending views may be thus stated: Philosophical necessity consists of the divine sovereignty, incorporating within itself, and recognizing as an independent power, free agency; libertarianism, of free agency, capable, within its own range of action, of voluntary choice, but dependent for self-renovation on divine grace. In other words, each system consists of the same two great truths apparently hostile, yet ever consistent in human consciousness. LAW IS SOVEREIGN; WILL IS FREE. If, in respect to the question of the primacy of these truths, there should be great diversity of opinion —if by one class of thinkers the one is placed first, and gazed at with peculiar reverence, if by another the other—this is no more than we find in civil society, where the two parallel elements of individual liberty and governmental authority are subject to the same treatment. The question is one of temperament. In sociology we find, on the one side, those who look up with peculiar reverence to the conservative power of government, who distrust the capacity of bodies of men for self-government, who turn fondly to the past and sadly to the future; on the other side, those who, holding that true conservatism requires constant change in order to withstand the dilapidations of time, have an *à priori* tendency to reforms, and look upon the past mainly as a platform on which to raise the achievements of the future. To the struggles of these two classes of opinion—the conservative and the reforming—we owe a great part of the healthy action of society. No man would now affirm that either class possesses the right solely, or that the apparently hostile truths of human independence and of human subordination are not concurrently recognized in political economy. Among those engaged in marshalling the two cardinal propositions of metaphysical theology we may call for the same charity.[2]

Religion conducive to sanity.

§ 665. As is remarked by Dr. Rush, in *Christian* countries departures from the *Christian* faith (*e. g.* infidelity and atheism) are "frequent causes" of insanity. And the same is equally true of departures in the direction of

[1] See *supra*, § 147.

[2] Wharton on Theism, § 128. See also *supra*, § 147.

ignorant and fanatical superstition. The *former* position is readily explained. The soul, as well as the body, to enable it to stand steadily, requires that the eye shall be fixed upon some distant and external point. No man, for instance, can stand for any time on one foot if he fixes his eye on his own person; and he succeeds in maintaining his upright position precisely to the extent he is able to fix his eye firmly on a point in the distance. And in a psychological view this is readily explicable. It is only by the recognition of a *future* state that the soul can be effectually steadied in *this*. And it is precisely such a system as the Christian religion describes —one which affords a positive assurance of immortal peace to those who seize upon it for their portion—which, while it recognizes that innate depravity which the heart is but too ready to testify to from its own experience, promises divine aid in the struggle—which announces the pardon of past sin, while it affords the aid and succor of divine grace.

"I envy no quality of the mind or intellect in others, nor genius, nor power, nor fancy," says Sir H. Davy: "but if I could choose what would be most delightful, and, I believe, most useful to me, I should prefer a *firm religious belief to every other blessing:* for it makes life a discipline of goodness; creates new hopes when all earthly hopes vanish; and throws over the decay, the destruction of existence, the most gorgeous of all lights; awakens life in death, and calls out from corruption and decay, beauty and everlasting glory."

The habitual practical recognition and adoption of such a system as this must necessarily generate a sobriety of temper, which will of all others be the most distant from derangement. That the reception of Christianity, whether real or nominal, should *cure* insanity, is no more to be expected than that it should cure the smallpox. If it did—if a special miracle was wrought for the purpose of destroying the original characteristics of each individual—it would not only destroy moral agency and hence break up probation, but would produce an almost entire derangement of human affairs by obliterating the marks of individuality, to say nothing of identity.

§ 666. To the same effect are the following observations of Dr. Copland: "It must not be supposed, from what I have advanced, that the Christian religion is truly chargeable with causing insanity; it actually has an opposite tendency. Mistaken views,

excessive fervor, unfounded fears, and various feelings arising from these sources, are the only causes of insanity in connection with religion. Among those who entertain just and sober opinions on religious topics—who make Christian doctrines the basis of their morals, the governors of their passions, the soothers of their cares, and their hopes of futurity—insanity rarely occurs. The moral causes of derangement which would not fail of producing injurious effects on others prove innocuous in them, for these causes would be met by controlling and calming considerations and sentiments, such as would deprive them of intensity or neutralize their effects. Truly religious sentiments and obligations soothe the more turbulent emotions, furnish consolations in affliction, heal the wounded feelings, administer hopes to the desponding, and arrest hands of violence and despair."[1]

§ 667. And the testimony of Dr. Cheyne, who stood for many years at the head of the medical profession in Ireland, occupying the responsible post in that kingdom of physician-general to the forces, is equally emphatic: "Our experience of, and inquiries into the nature of insanity, during a period of forty years," he says, "enable us to say that such cases as that which we have just related" (those of insanity from morbidity of the religious affections) "are not in the proportion of one in a thousand to the instances of insanity which arise from wounded pride or disappointed ambition."[2] "True religion," he tells us in another place,[3] "is a preservative, although not a complete preservative, against derangement of the mind. We have no intention of concealing that we have known instances of insanity among believers, but it was not caused by their creed. We have also known instances in which all sense of religion has been permanently destroyed by insanity. Of such cases we would remark, that the believer has no right to expect for his believing friend exemption from evils arising from the state of the body on which insanity always depends. Let him moreover recollect, that as total insanity puts an end to moral accountability, nothing which may take place during a paroxysm of the disorder can affect the future happiness of his friend."

[1] Copland, Med. Dic., art. "Insanity."

[2] Cheyne on Derangement in Connection with Religion, pp. 178, 179.

[3] Ibid. p. 146.

§ 668. These views are not uncorroborated by practical observation. It is not necessary to record the cases where mania, particularly that of the suicidal cast, has been generated by an undue estimate of the importance of this life's incidents as compared with those of the next.[1] On the other hand, we may find a pregnant illustration of the converse process in the fact mentioned in the thirteenth report of the Hartford Retreat, that two hundred and eight farmers, fifty-eight merchants, and thirty-four day-laborers have been admitted into that institution to four clergymen. So a report of the New York State Lunatic Asylum, transmitted to the legislature on February 7, 1860, and which therefore covers a period of uncommon religious interest, out of 312 cases gives only six which are attributed to "religious excitement." The cases attributable to causes which religion could have corrected are ten times that number. Dr. Ray, in a report of the Butler Hospital for the Insane, says: "I believe—and it is in some measure the result of considerable observation of various psychological states—that in this age of fast living nothing can be relied upon more surely for preserving the healthy balance of the mental faculties than an earnest practical conviction of the great truths of Christianity."

(b^1) § 669. *What is called religious insanity is produced:* (a^2) *By a departure from practical Christianity.*[2]—John Newton was the religious adviser of Cowper, and has been charged by Hayley, if not by Southey, with having aggravated, by his emotional theology, Cowper's insanity. Yet how unjust this is, Newton's earnest and repeated appeals show. "He who wants to tell expe-

[1] Dr. Rush, after noticing the fact that 150 suicides took place in Paris in the year 1782, and but 32 in London, says, "It is probable the greater portion of infidels in the former than in the latter city, at that time, may have occasioned a difference in the number of deaths in the two places, for suicide will naturally follow small degrees of insanity, where there are no habits of moral order from religion, and no belief in a future state."—*Rush on the Mind*, p. 69.

[2] Shakspeare thus says :—

"Because you lack the faith that others have,

You judge it straight a thing impossible

To compass wonders save with help of devils."

Of alleged homicidal insanity produced by "fanatico-atheism," a case of much interest, that of Bieland, who, in 1869, shot a Berlin clergyman while engaged in performing divine service, will be found in the Appendix to 3d edition of this work, § 833.

riences," said he at one time, "will soon be creating experiences to tell." "A humble, dependent frame of spirit, perseverance in the appointed means, care to avoid all occasions of sin, a sincere endeavor to glorify God, an eye to Jesus Christ as our all in all, are sure indications that the soul is thriving, whether sensible consolation abound or not. Neither high nor low frames will do for a standard of faith; *self* may be strong in both."[1] Could there be wiser advice than this for the purpose of steadying the mind? And is not the certain faith on an intrinsic Providence far more likely to conduce to mental peace and rest than that flurried and fluctuating introspection which makes salvation depend upon one's present impression of self?

Appeal to unscriptural supernaturalism.

§ 670. Two cases of alleged fanatico-mania occurred in 1858, one in Germany and one in New Haven, which, from their striking similarity, as well as from the peculiar religious psychological phenomena by which they were attended, should receive the thoughtful attention of all in any wise concerned in the care of the mind. In both instances the scene was the bosom of a religious society, whose leaders pretended to have received special internal revelations from God. In each case, the "prophets," as those who claimed such revelations called themselves, asserted the right to suspend human laws and even divine precepts in obedience to the mandates which they maintained were revealed in the chambers of their own souls. It is difficult to deny that they were in one sense sincere. However much the delirium in which these visions were heard was originally of their own creation, it had become, as *delirium tremens* is to the man who at first made himself voluntarily drunk, so wrought into the system as to be convulsive, if not irresistible. In the New Haven case, though the investigation was not conducted by men of the highest skill or most mature experience, this opinion was sanctioned by the verdict of a jury. In the German case the most experienced psychological physicians united in the position that the delusion, whatever might have been its origin, had finally become involuntary. In the latter case, the parties had joined a sect called the "Apostolic Baptismal Community," which is a sort of composition between the German Anabaptists (Wiedertaufen) and

[1] Cited in "Man, Moral and Physical," by Rev. J. H. Jones, a work of great interest in reference to religious insanity and melancholy.

the Irvingites. Their ministry is divided into apostles, prophets, evangelists, shepherds (Hirten), and deacons, all distinguished by a special costume. They pretend to special and miraculous communications of the divine will, which communications are attended on the part of the recipient by convulsions, which, however they may have been originally feigned, have in many cases assumed the indisputable type of cataleptic ecstasies. In these the patients speak with what are called unknown tongues, and prophesy. It so happened that at one of their meetings two of the ministers received, as they declared, a direct supernatural command to kill one of their associates, and then to bring him to life again. The first injunction they executed, but failed in the second. The question of their responsibility being submitted to medical examination, Dr. Franz, a very distinguished psychologist, came to the conclusion that their moral sense had become so utterly corroded as to make perpetual confinement in a madhouse the only discipline to which they could properly be subjected.

§ 671. Now, to what are these phenomena to be traced? To Christianity, as one class of thinkers is but too ready to say? We apprehend not, for Christianity is emphatically a religion with a *written* and *positive*, as distinguished from an *emotional* and *mystic*, creed. Is it not rather in the departure from the Scriptural rule we may find the origin of these melancholy excesses? Let us trace them, for instance, to their source by those stepping-stones which so often enable us to follow the progress of an error from its inception to its close. Take, for instance, such a case as that of the Rev. David Austen, whose sad history is so touchingly told by Dr. Sprague in his history of the American pulpit. Mr. Austen began as a Presbyterian clergyman, and was marked, not only by his purity of life and his talents, but by his great efficiency as a pastor and influence as a preacher. Gradually, however, the objective side of revelation began to sink in his estimation, and the subjective to become exaggerated. He had visions which overrode the written word. The Lord had been pleased, he said, to deposit in his breast the secret of His coming. This and other revelations Mr. Austen began soon to proclaim with serene confidence and with startling effect. He fixed an actual day, in which he said the event was to take place. Crowds attended, and an excitement followed, which, if it did not cost others their reason, at least cost him his. The

fact that the sun set calmly on the predicted day did not shake his confidence. "The hour on the dial-plate," he said, "may have been mistaken;" but it was none the less true that the sun of the Divine Omniscience poured infallible light on the disk of his soul, opening to it those mysteries which the sublime imagery of the Apocalypse conceals. The Jews were to form an important element in the approaching catastrophe. They were to collect, he was assured, at New Haven preparatory to their migration to the Holy Land. He proceeded there to buy wharves as a depot for their embarkation. Being a man of considerable property, he obtained credit and bought four times as much land as he could pay for. Then came a crash which ended with his arrest and imprisonment. When he at last emerged, it was only as a broken-hearted as well as a deranged man, whose melancholy office it was to hover, during the remainder of his sad and long life, as a ghost over the grave of his dead usefulness.

Now, is it saying too much for us to attribute these and similar cases of supposed supernatural inspiration to that introversion of the spiritual and intellectual powers which makes personal emotions and experience the subject first of tender nursing and then of fatuous idolatry? "Come, let us look at this sensibility of mine!" cries the enthusiast, as he lifts it up in the air and ponders over it admiringly. The consequence is, that his perception of his emotions, as all introverted perceptions are, becomes exaggerated and confused. We all have familiar illustrations of this in the way in which when we turn the perceptive powers inward on a lost memory, *e. g.*, the spelling of a forgotten word—the more we think about it, the further off we get. The very act of introversion seems to paralyze our powers. So, also, if the public speaker, while in the flow of earnest thought, finds his consciousness suddenly turned in upon himself, the moment he thinks of *himself*, he loses his balance. This is thus forcibly illustrated by the Rev. C. H. Townsend, late of Trinity Hall, Cambridge, in his very curious work on Mesmerism:—[1]

"Any admixture of the introspective consciousness detracts from the perfection of one's acquired and habitual motions as much as it spoils the freedom and bold expansion of our thoughts. Of this we

[1] London, 1844, p. 20.

may soon convince ourselves. Though generally insensible of the act of breathing, we may, by attention, become aware of the process. What follows? An immediate sense of uneasiness and interruption of that regular motion which seems to go on so well of itself. Again, that winking of the eye, whereby the organ is healthily preserved, becomes a torment if we think about it. Again, too, every musician must have felt that when he has learned to play a piece of music by heart, if he *thinks* upon the direction of his fingers, he plays false. Let him trust to the simple memorial consciousness of his physical being, and he does not err."

§ 672. The true test, we apprehend, is to be found in the nature of the consciousness on which the claim to a Divine influence rests. If this consciousness be of the action of God's spirit in producing specific graces, it is in harmony with God's word. If, on the other hand, it amount merely to a vague but arbitrary idea of the presence of God's Spirit without such signs, it is open to grave question. Coleridge strikes at this when he tells us that one of the phenomena attending the possessors of fanatical delusions is, "that it is not enough that you grant them a consciousness of the gifts and graces infused, or an assurance of the spiritual origin of the same, grounded on their correspondence with the Scripture promises, and their conformity with the idea of the Divine Giver. No! they all alike, it will be found, lay claim, or at least look forward to, an inward perception of the Spirit itself and of its operating."

§ 673. Let us reduce this test to practice. Take, for instance, the inspiration of Brigham Young. "It is the Spirit working within me" to do, not this or that specific work of grace, but whatever work, no matter what may be its nature, in which I may happen to be engaged. So it was with the Anabaptist fanatics at Munster. The human will is not subjected to the Divine Spirit, but the Divine Spirit to the human will. The man is not judged by his conformity to the Spirit, but the Spirit by its utterance through the man. What Brigham Young claimed was not simply to act in the Spirit, for, if so, his claims could have been tested by the written word, and by the law of conscience. But he claimed to be the Spirit's organ, and thus to clothe with divine power his human utterances. So it is with the maniac who murders his wife and children under an alleged religious impulse. He bases his claims to the inspiration of the Spirit, not on the gracious affections wrought in his soul, but

in the arbitrary pretence of a divine presence incorporating itself in, and manifesting itself through, his own will.[1]

§ 674. The history of religious insanity in this country goes a great way to fortify the position that it is to a *departure* from the gospel system that most cases of what may be called dæmoniomania may be traced. On this point a thoughtful writer, whose attention has been particularly given to this topic, thus speaks:—[2]

"Passing over the many instances of such erratic and fanatical extravagances which history records, and to some of which the review before us alludes, we will glance at two recent and notable ones occurring among ourselves, that we may the better judge whether religion makes men insane, or whether it merely fails, in many cases, to bring them to their right mind; so that it may be said that they continue insane in spite of all that religion can do for them.

"A clergyman, in infirm health, sought to amuse his listless hours by framing a puerile romance, after the manner of eastern fabulists, with names, dates, and localities bearing no relation to sober history. These writings, in some way, without the author's privity, came into the hands of strangers. In 1826, one Joseph Smith professed to have found, in the town of Palmyra, N. Y., some brass plates inclosed in a box, such as is used for packing window-glass. Of these plates he pretended to be the interpreter. With a stone in his hat, and his hat over his eyes, he dictated what a man, named Harris, wrote. In consequence of some dispute, Harris departed before the interpretation was ended, and one Cowdrey took his place, and completed the 'Book of Mormon.' Smith then avowed himself a prophet, and the founder of a new dispensation, and gathered many disciples, who accompanied him to the State of Missouri, where they established a city and built a temple. We need not pursue their adventures.

"The contents of the Book of Mormon, or the Mormon Bible, were neither more nor less than the selfsame tales of romance

[1] See on this topic the remarkable volume, which has been already noticed, under the title, "The Apocatastasis, or Progress Backwards, a new tract for the times, Burlington, Chauncey Goodrich, 1854," to which the reader is referred for a very effective exhibition of the absurdity of the whole spirit-rapping system.

[2] Relations of Religion to Diseases of the Mind. Phila.: J. W. Moore, 1850.

which the invalid clergyman amused himself with writing. A large number of persons, however, embraced the delusion; many abandoned a profitable business, some sacrificed large property, and not a few were ruined in soul, body, and estate, by putting trust in this barefaced imposture.

"It is perfectly obvious, we think, that a mind well informed and established in the received doctrines of the Christian faith, and endued with but very ordinary discernment, would be proof against so bold an imposture. If any intelligent and respectable persons joined the Mormon ranks, that, of itself, shows either a predisposition to insanity, which this fanciful revelation was fitted to develop, but with which religion has no connection whatever; or that there is a deficiency of discernment, or a neglect or abuse of the reasoning powers, or a morbid love of distinction and notoriety, to gratify which they are willing to sacrifice all other interests. If a judicious faithful, parent or Sunday-school teacher had given direction to their inquiries, and furnished their minds with just and systematic, though exceedingly simple, views of the doctrines of revelation, they would have had balances wherewith to weigh the pretensions of the new prophet, and by means of these vanity and falsehood would have been made manifest.

"At a somewhat later period, a man named Miller (a Baptist minister, as it is said) professed to have had a revelation of the precise day on which the second advent of Christ would occur, and when his people would be called to rise and meet him in the air! He and his deluded apostles, or agents, went from town to town and from house to house, 'leading captive silly women,' and imposing upon the credulity of the ignorant. So settled was the conviction of many minds of the truth of his predictions, that they arranged their worldly affairs in reference to it, as an ascertained event, and made no contracts extending beyond the designated day. Prosperous citizens sold their estates, and declined the ordinary avocations of life, that they might give themselves wholly to the business of preparation; and, as the eventful period drew nigh, many evinced the sincerity of their convictions by providing what they regarded as suitable apparel for an aerial flight, and some actually assembled in groups upon summits which might be supposed most favorable to an early and easy ascension! The dupes of the false prophet were counted by thousands. Scores were com-

mitted to insane asylums, who were crazed with excitement, or with disappointment; and many within and without the charmed circle were doubtless left to believe that all revelations are as idle and delusive as Millerism.[1]

"We need not say how the plainest Scriptures must have been wrested from their true intent and meaning, nor how deaf an ear must have been turned to the voice of reason and common sense, before the mind could have surrendered itself to such a fancy. There is not a trace of insanity, however, in any stage of the process. It is a simple, voluntary subjection of reason to the influence of imagination or superstition, instead of a childlike submission of all the powers and faculties of body and mind to the revealed will of God. And although we may admit that such delusions have in many instances been the ostensible cause of insanity, as our hospital returns allege, 'revealed religion' is no more responsible for them than for paroxysms of *mania-à-potu*. It is because the plain truths of revealed religion were misapprehended, perverted, or rejected, that the imposture succeeded, and the mind was led captive by Satan at his will. It is not strange that a vessel left to itself on a stormy sea should, sooner or later, go to the bottom, or fall into the hands of wreckers."[2]

§ 675. The topic of the appeal to the selfish element has already been collaterally noticed.[3] In all periods of mental excitement, there is a tendency to claim sympathy from outside. A person is struck down by real grief. When in this state the sympathy of friends is attracted by peculiar demonstrations of broken-heartedness. These demonstrations are at first real, but, in consequence of the commiseration they receive, are permitted to continue without restraint, and then become at least partially affected. "The pleasure of receiving unwonted sympathy," to recur to a passage from Dr. Carter, already cited, "once tasted, excites a desire for it which knows no bounds; and, when the fits have become familiar occurrences, and cease to excite attention, their effect is heightened by the designed imitation of some other disease." There is a strange union in such cases of the voluntary with the involuntary, which partly subjects

Desire for sympathy often becomes chronic and hysterical.

[1] See an essay on this point, in 1 Am. Journ. of Insanity, 249.

[2] Relations of Religion to what are called Diseases of the Mind. Philadelphia: J. W. Moore, 1850.

[3] See *supra*, § 517.

craft to convulsion, and partly convulsion to craft. But after a while, particularly if the *petting* system on the part of friends continues, the disease becomes chronic, and degenerates into hysteria. Even then there is cunning employed in the resort to new devices by which fresh sympathy can be collected when the old stock is exhausted.

§ 676. The same influences exist in periods of popular excitement, either on religion or any other prominent topic. Let the love of attention be appealed to—let public interest be drawn to persons exhibiting certain symptoms—and these symptoms will be assumed, until at last hypochondriasis or hysteria follows. Intense self-consciousness, the power of imitation, and the desire to excite interest, generate this form of disease, which, in its turn, generates a refined and elegant but misanthropic selfishness.

Selfishness a germ of hysteria.

"There is one perversion of moral feeling," says Archdeacon Stopford, in a pamphlet published at the time of a revival in Ulster in 1858–9, "which always exists in hysteria, and more than anything else may make us doubt whether hysteria be chosen of God as a means of conversion, and that is *selfishness*. Now, I protest against being thought to imply that all persons who are hysterical are constitutionally selfish. I have known the contrary in several instances, and I know the effect in such cases of appealing to unselfish feeling; but it will be easily understood from the foregoing account, that the predominance of the idea of 'self' as the object of the mind is of the very essence of the disease, and it is the necessary consequence of this, *if allowed to proceed*, to engender selfishness; the woman who *habitually indulges* hysterical feeling, becomes the most selfish and unsympathetic being in the world, except one —the man who indulges and cherishes hypochondriacal feeling.

"I must suggest caution in coming to an opposite conclusion on apparent evidence to the contrary in mild forms of hysteria in its *incipient stages*. I struggled long against admitting that the predominance of the idea of 'self' in hysteria always contains the germ of selfishness; but I had to admit the conviction, that this is true. As hysteria grows by habit or indulgence, all its evils become apparent; but a trained observer detects the germs in its origin."[1]

[1] In connection with the above, it is well to call attention to the following remarks of a sagacious and experienced physician, Dr. Francis: "In at least

(b^2) § 677. *By constitutional idiosyncrasies.*—This topic has been previously noticed.[1]

(*c*) *Fanatico-mania as a defence.*

§ 678. Crimes committed under the influence of fanatical impulses, such as those which have been just mentioned, may be considered in the same light as crimes committed in a state of drunkenness. In the latter case, an indi-

Cannot *per se* confer irresponsibility.

three cases out of four, I have found hysteria associated with uterine derangement, and the restoration of the menstrual function to its healthy state has proved the precursor of the removal of the hysterical annoyance." Hysteria, again, may manifest itself chiefly by disorder of the mental faculties, and the moral feelings and emotions. "The mental affections," observes Dr. Copeland, "connected with hysteria may be referred, 1st, to certain states of monomania, among which excited desire, amounting in some cases to nymphomania, may be enumerated; 2d, to *ecstasies* and mental excitement, in some cases of a religious nature, in others of different descriptions; 3d, to a state of somnambulism; 4th, to a form of delirium, generally of a lively character, with which various hysterical symptoms are often conjoined. Hysterical females are not merely capricious or whimsical, but they often become enthusiastic for a time in the pursuit of an object, or in cherishing an emotion by which they have been excited. In many such cases the nervous excitement and vascular turgescence of the uterine organs determine the character of the mental disorder; elevating certain of the moral sentiments, or of the intellectual manifestations, to a state of extravagance, passing in some instances into delusion or monomania. Many cases of puerperal mania are merely extremes of the hysterical disorder of the moral and intellectual powers or states of the mind. All these more extreme forms of mental affection are observed only where, in connection with much local or uterine irritation, there is a great deficiency of nervous energy generally, and of mental power in particular; or where, with such deficiency, there has been much injudicious culture, or perversion or improper excitement of the imagination. Females sometimes become passionately attached to an object, and this passion may advance even to nymphomania or monomania." A diseased state of feeling (viewing feeling and thought as constituting the two factors of the mind) is the main ingredient of religious insanity in which the sexual sympathies are involved. "No physiologist," says Dr. Maudsley, in his lectures published in 1870 (*Body and Mind*, London, 1870, p. 85), "can well doubt that the mystical union of the sexes lies very close to a union that is in no wise mystical, when it does not lead to madness." He cites to this effect the trances of St. Theresa and St. Catharine de Sienne; and he mentions as more extreme examples the cases of those insane women who believe themselves to be visited by lovers or ravished by persecutors during the night. And he adds that "sexual hallucinations, betraying an ovarian or uterine excitement, might almost be described as the characteristic feature of the insanity of old maids." See *supra*, §§ 322, 517.

[1] *Supra*, §§ 345–378.

vidual who knowingly takes intoxicating liquor cannot defend himself on the fact of guilt by proof of his intoxication. It is otherwise, however, when the guilty act is the immediate result of *mania-à-potu*, in which case the malady has assumed the shape of a substantive and permanent type, and, like any other delirium, is to be treated as destroying responsibility.[1] In like manner, the voluntary adoption of a belief which includes among its incidents a known violation of law, does not relieve the party, who commits such violation of law under such influences, from responsibility.[2] If, however, he sink into consequential delirium, and then commit the crime, he is irresponsible.

Fanatical enthusiasm, whether religious or irreligious, does not, therefore, *by itself* confer irresponsibility, however much it may mitigate the sentence imposed.[3]

10. *Politico-mania.*[4]

§§ 679–681. "Politico-mania," as a specific defence, is unknown in the courts. No doubt persons unquestionably insane have been tried

[1] See *supra*, §§ 146–162.

[2] Ibid. See 3 Am. Journ. Ins. 166; and for report of Thom's case, ibid. 170. See also 4 Hammond's Journal Psyc. 657. See 102 Bost. Med. and Surg. Journ. 265.

[3] Ibid. See for a curious case of infidel fanaticism, Appendix to 3d ed. of this work, § 833.

[4] See on this point Influence des Evénemens et des Commotions Politiques sur le Développement de la Folie, par le Docteur Belhomme, Paris, 1849; and a review of the same in Journ. Psyc. Med., vol. iii. p. 31.

"Psychical infection," to use the expressive term of Ellinger, is peculiarly operative in political relations. Attempts at insurrections, acts of lawlessness against government, murderous assaults upon public officers, become at times epidemic. Marc illustrates this by the cases in which public conspicuous crimes have become contagious; *e. g.*, arson and murder. The tendency to seditious violence is generated by an oppressive government bearing on temperaments tainted with just such an infection.

"Certain forms of government," says Dr. Rush, "predispose to madness. They are those in which the people possess a just and exquisite sense of liberty, and of the evils of arbitrary power against which complaints are stifled by a military force. The conflicting tides of the public passions, by their operations upon the understanding, become in these cases a cause of derangement. The assassination of tyrants and their instruments of oppression is generally the effect of this disease. That madness is thus induced, I infer from its occurring so rarely from a political cause in the United States. I have known but one instance of it, and that was of a gentleman who had been deranged some years before, from debt contracted by extravagant living. (In a government

Politico-mania no defence.

for political offences; and in some such cases the defence of insanity has been successfully interposed. But at no time has the defence been offered that the defendant, sane in all other respects, was insane on the subject of government, and therefore irresponsible for any attacks on government which he might institute. Logically and psychologically this defence is as good as that of any other "monomania." But practically the position is so absurd that no defence has heretofore been bold enough to offer it.[1] For no state could, without *felo de se*, recog-

where all the power of a country is representative and elective, days of general suffrage and free presses serve, like chimneys in a house, to conduct from the individual and public mind all the discontent, vexation, and resentment which have been generated in the passions by real or supposed evils, and thus to prevent the understanding being injured by them.) In despotic countries, where the public passions are torpid, and where life and property are secured only by the extinction of the domestic affections, madness is a rare disease. Of the truth of this remark, I have been satisfied by Mr. Stewart, the pedestrian traveller, who spent some time in Turkey, also by Dr. Scott, who accompanied Lord M'Cartney in his embassy to China, and by Mr. Joseph Rexas, a native of Mexico, who passed nearly forty years of his life among the civilized but depressed natives of that country. Dr. Scott informed me that he heard of but a single instance of madness in China, and that was in a merchant who had suddenly lost £100,000 sterling by an unsuccessful speculation in gold dust."[2] With regard to Mexico and China, however, recent observations show that these remarks should be greatly qualified.

[1] "The British government, even in our day, sentenced to death the Obeah men of the West Indies, who pretended to supernatural power in order to foment rebellion." Sir Bartle Frere, *Nineteenth Century*, Dec. 1881, Am. Reprint, 11, citing Edwards' Hist. British Colonies in the West Indies, vol. ii. p. 106. The same defence was unavailingly set up by the assassin of Lord Mayo.

The *Atlantic Monthly* for December, 1881, gives an interesting article on British state assassins and the defence of insanity. The first case mentioned is that of Hadfield in 1800. In this case "Major Ryan testified that the prisoner, in a paroxysm of madness, came near stabbing him with a bayonet at the Croydon barracks in 1796. John Laine, a private, deposed that Hadfield, in the hospital at Brussels, imagined himself to be King George, and, calling for a looking-glass, felt about his head for his crown of gold. Three doctors testified to the fearful nature of his wounds, and that the resulting injuries had, in their opinion, affected his brain. Several of Hadfield's relatives deposed that he had, at different times, fancied himself to be Jesus Christ and God. On the morning of the day on which he attempted the king's life, as they testified, he said he had seen God in the

[2] Rush on the Mind, p. 66.

nize the irresponsibility of such a "*mania*." To do so would be to give liberty to political fanaticism to execute without restraint any crimes by which its purposes could be subserved.

night, and that he (Hadfield) had been dining with the king.

"The jury, without leaving the box, found a verdict of 'Not guilty, on the ground of insanity,' and he was thereupon committed to Bedlam 'during his majesty's pleasure.' This escape of Hadfield through the loop-hole of insanity was strongly resented by the public opinion of the day, and the resent found voice in parliament. Some changes in the law followed, of which more hereafter."

Bellingham, in 1811, was prosecuted for shooting Mr. Perceval. Bellingham had been a long and persistent claimant for compensation for services he claimed to have rendered the government. On being asked on trial what he could say in his defence, he began "by complaining that the papers necessary to his defence were taken out of his pocket when he was arrested, and had not been returned to him. He then expressed his 'great obligation to the attorney-general for the objection which he has made to the plea of insanity,' and made a rambling speech, of which the following extract is a fair specimen :—

"'I think it is far more fortunate that such a plea as that should have been unfounded than it should have existed in act. That I am or have been insane is a circumstance of which I have not been apprised, except in the single instance of my having been confined in Russia; how far that may be considered as affecting my present situation it is not for me to determine. I beg to assure you that the crime which I have committed has arisen from compulsion rather than from any hatred of the man whom it has been my fate to destroy. Considering the amiable character and the universally-admitted virtues of Mr. Perceval, I feel if I could murder him in a cool and unjustifiable manner I should not deserve to live another moment in this world. Conscious, however, that I shall be able to justify everything which I have done, I feel some degree of confidence in meeting the storm which assails me, and shall now proceed to unfold a catalogue of circumstances which, while they harrow up my own soul, will, I am sure, tend to the extenuation of my conduct in this honorable court.'

"He then proceeded to read a long petition about his visit to Russia; what he had done there for the government; how he had left his wife there in great distress; and how, since his return, he had applied to the departments in vain for relief. At no point in his statement did he connect Mr. Perceval with his grievances, or appear to recognize any logical necessity for so doing. He sat down at last, and his doom was speedily fixed."

Edward Oxford was tried in 1840 for shooting at Queen Victoria. He was put on trial at the Old Bailey on July 9th in that year.

"The trial lasted three days; Lord Denman, Baron Alderson, and Justice Maule on the bench, and the array of counsel including the attorney-general and solicitor-general (Sir John Campbell and Sir Thomas Wilde), Sir Frederick Pollock, Mr. Wightman, Mr. Adolphus, and Mr. Gurney for the Crown, and Mr. Sydney Taylor and Mr. Bodkin for the prisoner. Again, as in the case of Hadfield, the defence set up was that of insanity. Oxford's

counsel called witnesses to prove that his grandfather and father had both been insane. His mother was a principal witness, and testified that she had married the would-be regicide's father because he had threatened self-destruction if she should refuse; that while she was *enceinte* her husband was in the habit of terrifying her with hideous grimaces and horrible gesticulations, so that one of her children was born, and after three years died, an idiot. As to the prisoner, she deposed that he had always been an erratic, vicious youth, extravagantly vain and ambitious, begging as a boy to be sent to sea, where he believed he would have nothing to do but strut along the deck, give orders, and become Admiral Sir Edward Oxford. A short time previous to her confinement with the prisoner, as she further made oath, her husband had pointed a gun at her head. This was the main substance of the evidence in support of the theory of insanity.

"On the other hand, the Crown established the facts that the prisoner had purchased the pistols some days before the shooting, and had practised with them upon a target; that he had never at any time, by any one, been treated as insane, and that the attempt was made with all possible method and deliberation. Five doctors, however, who had examined Oxford in his cell, testified their belief that he was insane. The bench instructed the jury with a heavy leaning against this medical testimony, but, after an hour's deliberation, they, following the example of their predecessors who tried Hadfield, brought in a verdict of acquittal on the ground of insanity. Oxford was thereupon committed to Bedlam for life.

"The next attempt on the life of Queen Victoria was made on the 30th of May, 1842, by John Francis, aged twenty. Francis discharged at the queen a pistol loaded with powder and to quote the language of the indictment, 'certain other destructive materials and substances unknown.' He was convicted, and sentence of death was passed upon him in the ancient form prescribed for prisoners condemned for high treason. This form is curious in its antique barbarity, and runs as follows: 'The court now declares the last sentence of the law, which is that you, John Francis, be taken hence to the place whence you came, and be thence drawn on a hurdle to the place of execution; and that you be there hanged by the neck until you be dead; and that afterwards your head shall be severed from your body, and your body, divided into four quarters, shall be disposed of as her majesty shall think fit. And may God Almighty have mercy on your soul.' It is perhaps needles to say that no such revolting outrage was enacted upon the body of Francis. In deference to the humane wish of the queen herself, his sentence was, in fact, commuted to transportation for life.

"Within five weeks from the date of this act of royal clemency, the queen was once more assailed by one John William Bean, a deformed stripling, aged seventeen. On Sunday, the 3d of July, 1842, as her majesty was going to the chapel royal, Bean presented a pistol at her, and snapped the trigger, but failed to discharge the weapon. He was promptly seized, and on the pistol being examined, it was found to be loaded only with powder, wadding, and minute fragments of a clay pipe. Bean was tried for simple misdemeanor; the defence of insanity was not offered; and he was sentenced to eighteen months' imprisonment, with hard labor. In spite of the burlesque character of this assault, the national

feeling was by this time excited to a high pitch of indignation by these repeated outrages, and the result was the passing of the act of parliament (5 and 6 Vict., chap. 51) entitled 'An act for providing for the further security and protection of her majesty's person.' This is the statute to which the late British minister at Washington, Sir Edward Thornton, referred in his comments upon Guiteau's crime, intimating his opinion that a like provision of law would have a salutary effect in this country. It provides that whoever 'shall discharge or attempt to discharge, or point, aim, or present, at or near to the person of the queen,' any fire-arm, whether the same shall be loaded or not, or shall 'strike or attempt to strike, or strike at the queen's person with any offensive weapon' shall be guilty of a high misdemeanor, and be 'liable, at the discretion of the court, to be transported for seven years, or imprisoned, with or without hard labor, for any period not exceeding three years, and during such imprisonment to be publicly or privately whipped as often and in such manner and form as the court shall direct, not exceeding thrice.'

"It was the whipping clause upon which Sir Edward Thornton laid stress. It seems to have had a deterrent influence upon British Guiteaus, as for seven years after its enactment the queen was not again molested."

McNaughten's case, which followed, has been abundantly discussed: Mr. Drummond was shot by McNaughten in mistake for Sir Robert Peel; the motive of the assault being political disappointment. McNaughten was acquitted on the ground of insanity, the prosecution offering no expert testimony to rebut that of the defence. Of this case Dr. Taylor, in his work on medical jurisprudence, thus speaks:—

"When we find a man, not showing any previous intellectual disturbance, lurking for many days in a particular locality; having about him a loaded weapon; watching a particular person who frequents that locality; not facing the individual and shooting him, but coolly waiting until he has an opportunity of discharging the weapon unobserved by his victim or others, the circumstances appear to show such a perfect adaptation of means to ends, and such a power of controlling actions, that it is difficult to understand on what principle an acquittal on the ground of insanity could have been allowed. *I refer here to the case of McNaughten, tried for the murder of Mr. Drummond, January*, 1843. The acquittal in this case was the more remarkable because there was no proof of general insanity, and the crime was committed for a supposed injury. According to the rules laid down by the fifteen judges, from questions submitted to them in connection with this case, *this man should certainly have been convicted.*"

The last English case in which *politico-mania* was offered as a defence was that of Pate, who struck Queen Victoria, in June, 1850, on the face with a whip. The queen was uninjured; Pate was tried in July of the same year.

"Insanity was again the plea relied upon. It was proved that as an officer in the army, his behavior had been eccentric; that on one occasion he had deserted, but had been allowed to rejoin the service without punishment, because his superior officers regarded him as in an unbalanced state of mind; that in 1842, the loss of three fine horses and a favorite Newfoundland dog had thrown him into a morbid and hysterical condition, and that ever since he had acted strangely. A cab-driver was called to the witness-stand, who deposed that every day, at exactly a quarter past three o'clock in the

afternoon, for many years, he had been hired by the prisoner to drive him over Putney Bridge to Putney Heath; always taking the same route, and stopping at the same spot. This and a few other strange habits were shown, and upon them Mr. Cockburn built the theory of 'uncontrollable impulse.' In summing up the case to the jury, Baron Alderson, addressing himself to this plea of uncontrollable impulse, said: 'The law does not recognize such an impulse. If a person was aware that it was a wrong act he was about to commit, he was answerable for the consequences. A man might say that he picked a pocket from some uncontrollable impulse; and in that case the law would have an uncontrollable impulse to punish him for it.' Pate was convicted, and sentenced to a term of seven years' penal servitude."

In U. S. *v.* Guiteau, Sup. Court, Dist. of Columbia, December, 1881, and January, 1882, the defendant being on trial for the murder of President Garfield, the defence was in part an alleged belief of the defendant that he was divinely commissioned to kill the president, and in part an alleged conviction that the death of the president was necessary to establish a rightful political influence in the country. On the legal questions of responsibility involved, Judge Cox answered the points submitted to him as follows:

No. 1.

"The legal test of responsibility, where insanity is set up as a defence for alleged crime, is whether the accused, at the time of committing the act charged, knew the difference between right and wrong, in respect of such act.

"Hence, in the present case, if the jury find that the accused committed the act charged in the indictment, and, at the time of its commission, he knew what he was doing, and that what he was doing was contrary to the law of the land, he is responsible.

"Unless, in consequence of insane mental delusions, or other form of mental disorder, he was laboring under such a defect of reason as to be incapable of understanding the obligation of the law of the land, and the duty and necessity of obedience to it, and of understanding that his act was wrong because it was in violation of the law of the land.

"I have examined the other instructions, and find that portions of them, as they are drawn, conflict with the views I have already expressed, and other portions require to be stated with more fulness.

"And I shall now give an instruction which is marked No. 2, which embodies all I think is correct in the remaining instruction asked on the part of the government, and in the first four instructions asked on the part of the defence, and that is:—

No. 2.

"If the jury find that the defendant committed the act charged, and, at the time thereof, knew what he was doing, and that what he was doing was contrary to the law of the land, it constitutes no excuse, even if it were true that when he committed the act he really believed that he was producing a great public benefit and that the death of the president was required for the good of the American people.

"Nor would such excuse be afforded by the fact that in the commission of the act he was controlled by a depraved moral sense, whether innate or acquired, or by evil passions, or indifference to moral obligations.

"And even if the jury find that the defendant, as a result of his own reasoning and reflection, arrived at the

determination to kill the president, and as a further result of his own reasoning and reflection, believed that his said purpose was approved or suggested or inspired by the Deity, such belief would afford no excuse.

"But it would be different and he would not be responsible, criminally, if the act was done under the influence and as the product of an insane mental delusion that the Deity had commanded him to do the act, which had taken possession of his mind, not as the result of his own reflections, but independently of his will and reason, and with such force as to deprive him of the degree of reason necessary to distinguish between right and wrong, as to the particular act.

"In such case, even if he knew that the act was a violation of the law of the land, he would not be responsible, if his reason was so perverted by the insanity that he was incapable of understanding the obligation of the law of the land, and that the act was wrong as a violation of that law, and *wrong in itself*.

"In this connection I add words 'wrong in itself' because I can conceive a case in which one might believe insanely that the law of the land provided no punishment for murder, and yet might be perfectly aware of the moral enormity of the crime. I would be unwilling to pronounce him irresponsible.

"I have omitted from this instruction one important feature of those asked for on the part of the defence. It is expressed in the last paragraph of the first instruction, in the words, 'or was it committed under an influence or power which the accused could not resist, by reason of his unsoundness of mind.'

"This, I presume, seeks to leave to the jury the question of irresistible impulse as the cause of the homicide.

"Now, it cannot be denied that some of the most respectable courts in the country recognize it as possible that a man may be driven against his own will to the commission of an act which he knows to be wrong, by an insane, irresistible impulse within him, overriding his will and conscience; and they maintain that as, under such circumstances, the will to do wrong, the very essence of criminality, is wanting, he ought not to be held criminally responsible.

"They accordingly hold that the test of knowledge of right and wrong, which I have stated to be the general rule, ought to be qualified by the further condition that the party must have the power to choose between doing, and not doing the act.

"Other courts, on the contrary, repudiate this view as unsound and dangerous.

"The question is a dangerous one alike for court and jury to handle; and I do not intend to express an opinion upon it, farther than the facts of the case require; and they seem to me to relieve me from the necessity and responsibility of discussing it generally.

"If we strike out of this case all the declarations and testimony of the defendant himself, we have no light whatever on this subject; there are circumstances, such as his actions and conduct, which his counsel may argue, of themselves, indicated some aberration, and are corroborative of, and explained by his testimony; but, of themselves, they would have afforded no indication of the particular motive or special form of delusion that actuated him. Of this we have no indication, except in the declarations, oral or written, of the defendant himself. But, he has never claimed that he was irresistibly impelled to do an act which he knew to be wrong. On the contrary,

he has always claimed that it was right. He justified it at the time and afterwards, in his papers, as a political necessity and an act of patriotism. And whether he claimed inspiration early or late, he has claimed that it was inspired, and therefore right. He has used the words *pressure* and *inspiration* interchangeably, as it were, to express the idea. This has no meaning, unless it be that he was under an insane delusion that the Deity had inspired or commanded the act. He has certainly not separated the idea of pressure or impulse from the conviction of inspiration and right and duty. He has not asserted any form of insanity which did not involve a conviction of right to do the act.

"And I feel sure that I am not transcending the province of the court, when I say that there is no evidence in the case tending to prove any irresistible impulse as a thing by itself, and separate from this alleged delusion.

"Therefore the case does not seem to me to present, or call for any ruling on, the hypothesis of an irresistible impulse to do *what the accused knew to be wrong*, and what was against his will.

"Whether there is such a thing as irresistible insane impulse to commit crime, and whether it has existed in any particular case, are questions of fact and not of law.

"In this case, I think there is no testimony showing that it can exist by itself, as an independent form of insanity, but rather the contrary. There is, however, testimony tending to show that such impulses result from and are associated with insane delusions and especially with such an insane delusion as that the party has received a command from the Deity to do an act. But if such an insane delusion exists, so as to destroy the perceptions of right and wrong as to the act, which is substantially the defendant's claim, this of itself is irresponsible insanity, and there is no need to consider the subject of impulses resulting from the delusion.

"On the other hand, if there was no insanity, but a mere fanatical opinion or belief, such as before described, the only impulse that could have actuated the defendant must have been a sane one, such as, in the most favorable view of it, a mistaken and fanatical sense of duty, which the law requires him to resist and control.

"In connection with the medical testimony tending to show that these impulses are always or generally associated with some insane delusion, if there are facts tending directly to show the presence or absence of an irresistible impulse, they may perhaps furnish some evidence of the existence or absence of insane delusion.

"But I think, in view of the undisputed features of the case, it would only confuse and perhaps mislead the jury to give them any instruction directly upon the subject of irresistible impulse, and that this particular case does not call for any qualification of the general rule adopted, as I have mentioned, as the test of responsibility.

"I have already stated that the fifth and sixth and eighth prayers are obnoxious to the suspicion that they embodied the doctrine of the New Hampshire court, and that is if the jury find insanity in general terms, and find that the act was the result of that insanity, they ought to acquit. For that reason I decline to grant them.

"The seventh instruction is—

"The punishments of the law are intended for rational persons, and no one but a rational person can commit the crime of murder.

"That is somewhat objectionable because it is vague, and for another reason, and that it is simply the an-

nouncement of an abstract proposition, although, in ordinary parlance, the statement is correct.

"We now come to the ninth.

"If the jury have a reasonable doubt as to the sanity of the accused, at the time of committing the act charged against him as a crime, they should give him the benefit of that doubt, and should find him 'not guilty by reason of insanity.'

"There is perhaps a formal objection to this prayer, because it virtually requires the jury to find the fact of insanity upon a mere doubt of sanity.

"In reference to the question on whom rests the burden of proof when insanity is relied on as a defence, three different and conflicting views have been held by different courts. According to one view it is incumbent on the accused to establish the fact of his insanity at the time of the commission of the alleged crime, by evidence so conclusive as to exclude all reasonable doubt of it. But this view derives so little support from authority that it may be passed over without comment, as inadmissible.

"Another view is that the defence of insanity is an affirmative one, which the party asserting it must establish to the satisfaction of the jury by, at least, a preponderance of evidence. That is to say, the evidence in favor of it need not be so conclusive as to leave no room for reasonable doubt, but it must have more weight with the jury than the evidence against it, so that they would feel justified in finding the fact as they would find any fact in a civil suit, in which all questions of fact are decided according to the weight of the evidence.

"Still another view is that the sanity of the accused is just as much a part of the case of the prosecution as the homicide itself, and just as much an element in the crime of murder, the only difference being that, as the law presumes every one to be sane, it is not necessary for the government to produce affirmative proof of the sanity; but that if the jury have a reasonable doubt of the sanity, they are just as much bound to acquit as if they entertain a reasonable doubt of the commission of the homicide by the accused.

"The only question is as between the second and third of these rules. I have examined all the authorities on the subject with great care, and over and over again, and with a painful anxiety to be right. The cases which are referred to in support of the second rule are undoubtedly more numerous than the others. Some of those, however, turn upon statutory definitions of the crime of murder. For example, the statute of Massachusetts, in its definition of murder, omits the element of 'sound memory and discretion' in the perpetrator, so that the defence of insanity there is essentially a defence by way of confession and avoidance, and therefore it is held by that court that the defendant must establish it by preponderance of proof. A great many of the cases referred to are mere dicta, and some of them involve plain contradiction, and there is not one which I have examined which has the least show of argument. The opinions which support the last view are decidedly entitled, in my judgment, to the most confidence. They are reasoned out from first principles, and the reasoning has been unanswered, and, in my judgment, is unanswerable. The practice in this court has always been to give an instruction somewhat in the terms here claimed. Besides those already referred to, there is the case of Stone, the most recent one, in which the instruction given was as follows:—

"*Sixth.* In a capital case the defence of insanity is required to be made out

by strong, clear, and convincing proof, and in this case the jury must judge of the evidence offered to sustain this defence, and of its effect upon the main issue of guilty or not guilty; and if, upon consideration of all the evidence in connection with the presumption that what a man does is sanely done, *they entertain a reasonable doubt whether the prisoner committed the homicide*, as charged in the indictment, *or whether at the time of its commission he was in a sane state of mind*, they should acquit him, otherwise they should convict.

"I shall, however, adopt the suggestion which I find in some of the latest authorities, and that is not to instruct the jury to acquit if they feel a reasonable doubt about any one fact involved in the issue, but I shall instruct them as to the nature of this crime, and all the elemeuts composing it, including a responsible sane mind in the perpetrator. I shall instruct them as to the presumptions of innocence and sanity, and finally, that, upon the consideration of both these presumptions, if they then feel a reasonable doubt as to the guilt of the accused of the crime as so explained, the prisoner is entitled to an acquittal.

"The tenth and eleventh instructions do not involve any serious questions. The eleventh instruction asks me to say that—

"If the jury believe from the evidence that the prosecution have wilfully suppressed evidence of the mental condition of the accused during two weeks next following the shooting of President Garfield, which it was in their power to have produced on the trial, the jury have a right to take that fact into consideration as raising a presumption that such evidence, if produced, would have been unfavorable for the prosecution.

"Now, every instruction ought to be based upon some evidence in the case, and in giving this I should have to assume that there is some evidence of this wilful suppression, which I am unwilling to do.

"It is always open to either side to argue that evidence which has not been produced, but could have been produced, would have been injurious to the party who had possession of it; that is fair matter of argument to the jury in every case on both sides. In like manner, it is fair argument to the jury that the witnesses were interested or influenced by hope of compensation, and the ordinary motives that would induce men to swear falsely or to prevaricate. But I do not think the court ought to give formal instruction in the shape of either the tenth or eleventh of these prayers. I refuse them, however, after the explanation that I have already given, that it is open to counsel to comment upon the testimony of the witnesses and upon the conduct of the prosecution.

"The twelfth instruction is drawn with reference to section 5241, United States revised statutes. I do not understand that statute to create any new species of manslaughter. It uses the common law definitions of both murder and manslaughter, and, perhaps, in view of the doubts that I have already spoken of, applies them to cases where the mortal wound was inflicted in one jurisdiction and the death occurred in another.

"The terms *malice* and *maliciously* used in the statute would have no meaning except by reference to the common law. Now we know that the term 'malice,' in the definition of murder, does not require that proof shall be given of any special hatred or ill will to the deceased, but the deliberate intent to kill, from whatever motive, constitutes all the malice that the law requires to be shown; and that the terms 'without malice,' in the definition of man-

slaughter, mean simply without premeditated intent, as where the killing occurs in the heat of passion or on sudden quarrel.

"All this I will explain to the jury when it becomes necessary to charge them; but the instruction which is asked, in its use of the terms 'without malice in fact,' might convey the idea to the jury that if the killing was done from the motives declared by the prisoner, and he had, as he says, no personal ill will towards the president, it was not murder. It is objectionable on this ground, and every object that could be properly sought under this head will be attained by the explanations which I have indicated to be made to the jury.

"This disposes of all the instructions."

From the charge, as subsequently delivered, the following extracts are taken :—

"The cases I have referred to furnish an introduction to the subject of insane delusions, which plays an important part in this case and demands careful consideration. We find it treated, to a limited extent, in judicial decisions, but learn more about it from works on medical jurisprudence and expert testimony. Sane people are said sometimes to have delusions, proceeding from temporary disorder and deception of the senses, and they entertain extreme opinions which are founded upon insufficient evidence or result from ignorance, or they are speculations on matters beyond the scope of human knowledge; but they are always susceptible of being corrected and removed by evidence and argument.

"But the *insane delusion*, according to all testimony, seems to be an unreasoning and incorrigible belief in the existence of facts which are either impossible absolutely, or, at least, impossible under the circumstances of the individual. A man, with no reason for it, believes that another is attempting his life, or that he himself is the owner of untold wealth, or that he has invented something which will revolutionize the world, or that he is president of the United States, or that he is God or Christ, or that he is dead, or that he is immortal, or that he has a glass arm, or that he is pursued by enemies, or that he is inspired by God to do something.

"In most cases, as I understand it, the fact believed is something affecting the senses. It may also concern the relations of the party with others. But generally the delusion centres around himself, his cares, sufferings, rights, and wrongs. It comes and goes independently of the exercise of will and reason, like the phantasms of dreams. It is, in fact, the waking dream of the insane, in which facts present themselves to the mind as real, just as objects do to the distempered vision in delirium tremens.

"The important thing is that an insane delusion is never the result of reasoning and reflection. It is not generated by them, and it cannot be dispelled by them.

"A man may reason himself, and be reasoned by others, into absurd opinions, and may be persuaded into impracticable schemes and vicious resolutions, but he cannot be reasoned or persuaded into insanity or insane delusions.

"Whenever convictions are founded on evidence, on comparison of facts and opinions and arguments, they are not insane delusions.

"The insane delusion does not relate to mere sentiments or theories or abstract questions in law, politics, or religion. All these are the subjects of *opinions*, which are beliefs founded on reasoning and reflection. These opin-

ions are often absurd in the extreme. Men believe in animal magnetism, spiritualism, and other like matters, to a degree that seems unreason itself, to most other people. And there is no absurdity in relation to religious, political, and social questions that has not its sincere supporters.

"These opinions result from naturally weak or ill-trained reasoning powers, hasty conclusions from insufficient data, ignorance of men and things, credulous dispositions, fraudulent imposture, and often from perverted moral sentiments. But still they are *opinions*, founded upon some kind of evidence, and liable to be changed by better external evidence or sounder reasoning. But they are not insane delusions.

"Let me illustrate further :—

"A man talks to you so strongly about his intercourse with departed spirits that you suspect insanity. You find, however, that he has witnessed singular manifestations, that his senses have been addressed by sights and sounds, which he has investigated, reflected on, and been unable to account for, except as supernatural. You see at once that there is no insanity here ; that his reason has drawn a conclusion from evidence.

"The same man, on further investigation of the phenomena that staggered him, discovers that it is all an imposture, and surrenders his belief.

"Another man, whom you know to be an affectionate father, insists that the Almighty has appeared to him and commanded him to sacrifice his child. No reasoning has convinced him of his duty to do it, but the command is as real to him as my voice is now to you. No reasoning or remonstrance can shake his conviction or deter him from his purpose. This is an insane delusion, the coinage of a diseased brain, as seems to be generally supposed, which defies reason and ridicule, which palsies the reason, blindfolds the conscience, and throws into disorder all the springs of human action.

"Before asking you to apply these considerations to the facts of this case let me premise one or two things.

"The question for you to determine is, What was the condition of the prisoner's mind at the time when this tragedy was enacted? If he was sufficiently sane *then* to be responsible, it matters not what may have been his condition before or after. Still evidence is properly admitted as to his previous and subsequent conditions, because it throws light, prospectively and retrospectively, upon his condition at the time. Inasmuch as these disorders are of gradual growth and indefinite continuance, if he is shown insane shortly before or after the commission of the crime, it is natural to *conjecture*, at least, that he was so at the time. But all the evidence must centre around the time when the deed was done.

"You have heard a good deal of evidence respecting the peculiarities of the prisoner through a long period of time before this occurrence, and it is claimed that he was, during all that time, subject to delusions calculated to disturb his reason and throw it from its balance. I only desire to say here that the only materiality of that evidence is in the probability it may afford of the defendant's liability to such disorder of the mind, and the corroboration it may yield to other evidence which may tend directly to show such disorder at the time of the commission of the crime.

"A few words may assist you in applying to the evidence what I have thus stated.

"You are to determine whether, at the time when the homicide was com-

mitted, the defendant was laboring under any insane delusion prompting and impelling him to the deed.

"Very naturally you look, first, for any explanation of the act, which may have been made by the defendant himself at the time or immediately before and after.

"You have had laid before you, especially, several papers which were in his possession, and which purport to assign the motives for his deed.

"In the address to the American people, of June 16, which seems most fully to set forth his views, he says, 'I conceived the idea of removing the president four weeks ago. Not a soul knew of my purpose. *I conceived the idea myself*, and kept it to myself. I read the newspapers *carefully*, *for* and *against* the Administration, and *gradually the conviction dawned on me that the president's removal was a political necessity*, because he proved a traitor to the men that made him, and thereby imperiled the life of the republic.' Again, 'Ingratitude is the basest of crimes. That the president, under the manipulation of his secretary of state, has been guilty of the basest ingratitude to the Stalwarts, admits of no denial. The expressed purpose of the president has been to crush General Grant and Senator Conkling, and thereby open the way for his renomination in 1884. In the president's madness he has wrecked the once grand old Republican party, *and for this he dies.*' . . Again, 'This is not murder. It is a political necessity. It will make my friend Arthur president, and save the republic,' etc. The other papers are of similar tenor, as I think you will find.

"There is evidence that, when arrested, the prisoner refused to talk, but said that the papers would explain all.

"On the night of the assassination, according to the witness James J. Brooks, the prisoner said to him, that he had thought over it and prayed over it for weeks, and the more he thought and prayed over it the more satisfied he was that he had to do this thing. He *had made up his mind that he had done it as a matter of duty*, . . he made up his mind that they (the president and Mr. Blaine) were conspiring against the liberties of the people, and that the president must die.

"This is all that the evidence shows as to the prisoner's utterances about the time of the shooting.

"In addition to this, you have the very important testimony of the witness Joseph S. Reynolds, as to the prisoner's statements, oral and written, made about a fortnight after the shooting. If you credit this testimony, you find him reiterating the statements contained in the other papers, but perhaps with more emphasis and clearness. He is represented as saying *that the situation at Albany suggested the removal of the president*, and as the factional fight became more bitter, he became more decided. He knew that Arthur would become president, and that would help Conkling, etc. *If he had not seen that the president was doing a great wrong to the Stalwarts, he would not have assassinated him.*

"In the address to the American people, then written, he says, '*I now wish to state distinctly why I attempted to remove the president.* I had read the newspapers *for and against* the Administration, very carefully, for two months, before I conceived the idea of removing him. *Gradually, as the result of reading the newspapers*, the idea settled on me, that if the president was removed, it would unite the two factions of the Republican party and thereby save the government from going into the hands of the ex-rebels and their

northern allies.' '*It was my own conception*, and *whether right or wrong, I take the entire responsibility.*'

"A second paper, dated July 19th, addressed to the public, reiterates this and concludes, 'Whether he lives or dies, I have got the inspiration worked out of me.'

"We have now before us everything emanating from the prisoner about the time of the shooting and within a little over a fortnight afterwards. We have nothing further from him until over three months afterwards. Let us pause here to consider the import of all this.

"You are to consider, first, whether this evidence fairly represents the true feelings and ideas which governed the prisoner at the time of the shooting. If it does, it represents a state of things which I have not seen characterized in any judicial utterance or authoritative work as an insane delusion.

"You are to consider whether it is so described in the evidence, or does not, on the contrary, show a deliberate process of reasoning and reflection, upon argument and evidence for and against, resulting in an *opinion* that the president had betrayed his party, and that if he were out of the way it would be a benefit to his party and save the country from the predominance of their political opponents. So far there was nothing insane in the *conclusion*. It was doubtless shared by a great many others. But the difference was that the prisoner, according to his revelations, went a step farther, and reached the *conviction* that to put the president out of the way by assassination was a political necessity.

"When men reason the law requires them to reason correctly, as far as their practical duties are concerned. When they have the *capacity* to distinguish between right and wrong, they are bound to do it. Opinions, properly so called—*i. e.*, beliefs resulting from reasoning, reflection, or examination of evidence—afford no protection against the penal consequences of crime. A man may believe a course of action to be right, and the law, which forbids it, to be wrong. Nevertheless he must obey the law, notwithstanding his convictions. And nothing can save him from the consequences of its violation except the fact that he is so crazed by disease as to be unable to comprehend the necessity of obedience to it.

"The Mormon prophets profess to be inspired, and to believe in the duty of plural marriages, although it was forbidden by a law of the United States. One of the sect violated the law, and was indicted for it. The judge who tried him instructed the jury—

"That if the defendant, under the influence of a religious belief that it was right—under an inspiration, if you please, that it was right—deliberately married the second time, having a first wife living, the want of consciousness of evil intent, the want of understanding that he was committing a crime, did not excuse him.

"And the supreme court of the United States, to which the case went, under the title of 'Reynolds *v.* United States' (98 U. S. 145), in approving this ruling, said:—

"Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

"So here, as a law of the organization of society, under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed, can a man excuse his

practice to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and, in effect, to permit every citizen to become a law unto himself. Government could exist only in name, under such circumstances.

"And so, in like manner I say, a man may reason himself into a conviction of the expediency and patriotic character of political assassination, but to allow him to find shelter from punishment behind that belief, as an insane delusion, would be simply monstrous.

"Between one and two centuries ago, there arose a school of moralists who were accused of maintaining the doctrine that whenever an end to be attained is right, any means necessary to attain it would be justifiable. They were accused of practising such a process of reasoning as would justify every sin in the decalogue when occasion required it. They incurred the odium of nearly all Christendom in consequence. But the mode of reasoning attributed to them would seem to be impliedly, if not expressly, reproduced in the papers written by the defendant and shown in evidence:—

"It would be a right and patriotic thing to unite the Republican party and save the republic. Whatever means may be necessary for that object would be justifiable. The death of the president by violence is the only and therefore the necessary means of accomplishing it, and therefore it is justifiable. Being justifiable as a political necessity, it is not murder.

"Such seems to be the substance of the ideas which he puts forth to the world as his justification in these papers. If this is the whole of his position, it presents one of those vagaries of opinion for which the law has no toleration and which furnishes no excuse whatever for crime.

"This, however, is not all that the defendant now claims.

"There is, undoubtedly, a form of *insane delusion*, consisting of a belief by a person that he is inspired by the Almighty to do something; to kill another, for example, and this delusion may be so strong as to impel him to the commission of a crime.

"The defendant, in this case, claims that he labored under such a delusion and impulse, or pressure, as he calls it, at the time of the assassination.

"The prisoner's unsworn declarations, since the assassination, on this subject, in his own favor, are, of course, not evidence, and are not to be considered by you. A man's language, when sincere, may be evidence of the condition of his mind when it is uttered, but it is not evidence in his favor of the facts declared by him, or as to his previous acts or condition. He can never manufacture evidence in this way in his own exoneration.

"It is true that the law allows a prisoner to *testify* in his own behalf, and thereby makes his sworn testimony on the witness-stand legal evidence, to be received and considered by you, but it leaves the weight of that evidence to be determined by you also.

"I need hardly say to you that no verdict could safely be rendered upon the evidence of the accused party only, under such circumstances. If it were recognized, by such a verdict, that a man on trial for his life could secure an acquittal by simply testifying, himself, that he had committed the crime charged under a delusion, an inspiration, an irresistible impulse, this would be to proclaim an universal amnesty to criminals in the past, and an unbounded license for the future, and the courts of justice might as well be closed.

"It must be perfectly apparent to you that the existence of such a delusion can be best tested by the language

and conduct of the party immediately before and at the time of the act.

"And while the accused party cannot make evidence *for* himself by his subsequent declarations, on the other hand, he may make evidence *against* himself, and, when those declarations amount to admissions against himself, they are evidence to be considered by a jury.

"Let me here say a word about the characteristics of this form of delusion.

"It is easy to understand that the conceit of being inspired to do an act, may be either a sane belief or an insane delusion. A great many Christians believe, not only that events generally are providentially ordered, but that they themselves receive special providential guidance and illumination in reference to both their inward thoughts and outward actions, and, in an undefined sense, are inspired to pursue a certain course of action; but this is a mere sane belief, whether well or ill founded. On the other hand, if you were satisfied that a man sincerely, though insanely, believed, that, like Saul of Tarsus, on his way to Damascus, he had been smitten to the earth, had seen a great light shining around him, had heard a voice from Heaven, warning and commanding him, and that thenceforth, in reversal of his whole previous moral bent and mental convictions, he had acted upon this supposed revelation, you would have before you a case of an imaginary inspiration amounting to an insane delusion.

"The question for you to consider is, whether the case of the defendant presents anything analogous to this.

"The theory of the government is, that the defendant committed the homicide in the full possession of his faculties and from perfectly sane motives; that he did the act from revenge, or perhaps from a morbid desire for notoriety; that he calculated deliberately upon being protected by those who were politically benefited by the death of the president and upon some ulterior benefit to himself; that he made no pretence to *inspiration* at the time of the assassination, nor until he discovered that his expectations of help from the so-called Stalwart wing of the Republican party were delusive, and that these men were denouncing his deed, and that then for the first time, when he saw the necessity of making out some defence, he broached this theory of inspiration and irresistible pressure forcing him to the commission of the act.

"If this be true, you would have nothing to indicate the real motives of the act except what I have already considered. Whether it is true or not, you must determine from all the evidence.

"It is true that the term 'inspiration' does not appear in the papers first written by the defendant, nor in those delivered to General Reynolds, except at the close of the one dated July 19, in which he says that the *inspiration* is worked out of him; though, what that means is not clear. It is true, also, that this was after, according to General Reynolds, he had been informed how he was being denounced by the Stalwart Republicans.

"In one of the first papers I have referred to, the president's removal was called an act of God, as were his nomination and election, but whether this meant anything more than that it was an act of God in the sense in which all great events are said to be ordered by Providence, is not clear.

"Dr. Noble Young testifies that a few days after defendant's entrance into the prison—a time not definitely fixed—he told him he was inspired to do the act, but qualified it by saying that if the president should die, he

would be confirmed in his belief that it was an inspiration; but if not, perhaps not.

"The emphatic manner in which, in both the papers delivered to General Reynolds, the defendant declared that the assassination was his *own conception* and execution, and *whether right or wrong* he took the entire responsibility, his detailed description of the manner in which the idea occurred to him, and how it was strengthened by his reading, etc., and his omission to state anything about a direct inspiration from the Deity, at that time, are all circumstances to be considered by you on the question whether he then held that idea.

"On the other hand, you have the prisoner's testimony, in which he *now* asserts that he conceived himself to be under an inspiration at the time. He also advanced this claim in his interviews with the expert witnesses shortly before the trial.

"It becomes necessary then to examine the case on the assumption that the prisoner's testimony may be true, and to ascertain from his declaration and testimony what kind of inspiration it is which he thus asserts.

"According to the testimony of Dr. Strong, he inquired of the defendant if he claimed to have had any direct revelation from heaven, and the answer was that he *did not believe in any such nonsense.*

"According to Dr. Macdonald, who interviewed the prisoner on the 13th of November, he did not then, in terms, speak of his idea of removing the president as an inspiration, but as a conception of his own, and said that after conceiving the idea, he tried to put it aside; that it was repulsive to him at first; that he waited a week or two, thinking over it, and waiting for the Almighty to interfere. He had conceived the idea himself, but he wished the Almighty to have the opportunity of interfering to prevent its execution; and at the end of two weeks, no interference coming from the Almighty, he formed the deliberate purpose of executing the act, etc.

"According to the testimony of Dr. Gray, the prisoner said that he had received no instructions, heard no voice of God, saw no vision in the night, or at any time; that the idea came into his own mind first, and after thinking over it and reading the papers when he arrived at the conclusion to do the act, he *believed then* it was a right act, and was justified by the political situation.

"When asked how he could apply this as an instruction from the Deity, he said it was a *pressure* of the Deity; *that this duty of doing it, as he claimed, had pressed him to do it.*

"Again, he said, *he had not connected the Deity with the inception and development of the act; that was his own.* He did not get the inspiration until the time came for it, and that the inspiration came when he had reached the conclusion and determination to do the act.

"Perhaps the most remarkable of the prisoner's statements to Dr. Gray was, that at the very time when he was planning the assassination, he was also devising a theory of insanity which should be his defence, which theory was to be, that he believed the act of killing was an inspired act.

"Perhaps equally remarkable was the prisoner's theory propounded in this conversation, viz., that he was not *medically* insane, but *legally* so, *i. e.*, *irresponsible*, because the act was done *without malice.*

"Finally, on this subject you have the defendant's own testimony.

"He does not profess to have had any visions or direct revelation or distorted conception of facts.

"But he says that while pondering over the political situation the idea suddenly occurred to him that if the president were out of the way, the dissentions of his party would be healed; that he read the papers with an eye on the possibility of the president's removal, and the idea kept pressing on him; that he was horrified; kept throwing it off; did not want to give it attention; tried to shake it off, but it kept growing upon him, so that at the end of two weeks his mind was thoroughly fixed as to the necessity for the president's removal and the divinity of the inspiration. He never had the slightest doubt of the divinity of the inspiration from the 1st of June. He kept praying about it, and that if it was not the Lord's will that he should remove the president, there would be some way by which His providence would intercept the act. He kept reading the newspapers, and his inspiration was *being confirmed every day, and since the* 1st day of June he has never had a doubt about the divinity of the act.

"In the cross-examination he said: If the political necessity had not existed, the president would not have been removed—there would have been no necessity for the inspiration. About the 1st of June he made up his mind as to the inspiration of the act and the necessity for it; from the 16th of June to the 2d of July he prayed that *if he was wrong*, the Deity would stop him by His providence. In May it was an embryo inspiration—a mere impression that possibly it might have to be done. He was doubting whether it was the Deity that was inspiring him, and was praying that the Deity would not let him make a mistake about it, and that at last it was the Deity, and not he, who killed the president.

"Again, the confirmation that it was the Deity, and not the devil, who inspired the idea of removing the president came to him in the fact that the newspapers were all denouncing the president. He saw that the political situation required the removal of the president, and that is the way he knew that his intended act was inspired by the Deity; but for the political situation, he would have thought that it came from the devil.

"This is the substance of all that appears in the case on the subject of inspiration.

"It is proper to call your attention to some variations in the prisoner's statements at different times.

"In two of the papers of July he says it *was his own conception*, and he took the *entire responsibility*.

"In the conversations reported by Dr. Gray in November, he did not connect the Deity with the inception of the act. The conception was his own, and the inspiration came after he made up his mind; but he does not explain what he meant by the inspiration, unless it was that it was a pressure upon him, or, as he expresses it, the duty of doing it was pressing upon him.

"In his testimony *he disclaims all responsibility* while he still speaks of the idea of removing the president as an impression which arose in his own mind first. He says that in his reflections about it, he debated with himself whether it came from the Deity or the devil; prayed that God would prevent it if it was not His will; and finally made up his mind, from a consideration of the political stuation, that it was inspired by Him.

"On all this, the question for you is, whether, on the one hand, the idea

of killing the president first presented itself to the defendant in the shape of a command or inspiration of the Deity, in the manner in which insane delusions of that kind arise, of which you have heard much in the testimony; or, on the other hand, it was a conception of his own, followed out to a resolution to act, and, if he thought at all about inspiration, it was simply a speculation or theory, or theoretical conclusion of his own mind, drawn from the expediency or necessity of the act, that his previously conceived ideas were inspired.

"If the latter is a correct representation of his state of mind, it would show nothing more than one of the same vagaries of reasoning that I have already characterized as furnishing no excuse for crime.

"Unquestionably, a man may be insanely convinced that he is inspired by the Almighty to do an act, to a degree that will destroy his responsibility for the act.

"But, on the other hand, he cannot escape responsibility by baptizing his own spontaneous conceptions and reflections and deliberate resolves with the name of *inspiration*.

"On the direct question whether the prisoner knew that he was doing wrong at the time of the killing, the only direct testimony is his own, to the contrary effect.

"One or two circumstances may be suggested as throwing some light on the question.

"The declaration that, *right* or *wrong*, he took the responsibility, made shortly afterward, may afford some indication whether the question of wrong had suggested itself. And his testimony that he was horrified when the idea of assassination first occurred to him, and he tried to put it away, is still more pertinent.

"His statement, testified to by Dr. Gray, that he was thinking of the defence of inspiration while the *assassination* was being planned, tends to show a knowledge of the *legal* consequences of the killing. His present statement that no punishment would be too quick or severe for him if he killed the president otherwise than as agent of the Deity, shows a present knowledge of the wrongfulness of the act in itself, but this declaration is of value on this question of knowledge, only in case you should believe that he had the same appreciation of the act at the time of its commission, and disbelieve his story about the inspiration.

"I have said nearly all that I need say on the subject of insane delusion.

"The answer of the English judges, that I have referred to, has not been deemed entirely satisfactory, and the courts have settled down upon the question of knowledge of right and wrong as to the particular act, or rather the capacity to know it, as the test of responsibility. And the question of insane delusion is only important, as it throws light upon the question of knowledge of, or capacity to know, the right and wrong.

"If a man is under an insane delusion that another is attempting his life, and kills him in self-defence, he does not know that he is committing an unnecessary homicide. If a man insanely believes that he has a command from the Almighty to kill, it is difficult to understand how such a man *can* know that it is wrong for him to do it. A man may have some other insane delusion which would be quite consistent with a knowledge that such an act is wrong; such as, that he had received an injury; and he might kill in revenge for it, knowing that it would be wrong.

"And I have dwelt upon the question of insane delusion, simply because evidence relating to that, is evidence

touching the defendant's power, or want of power, from mental disease, to distinguish between right and wrong, as to the act done by him, which is the broad question for you to determine, and because that is the kind of evidence on this question which is relied on by the defence.

"It has been argued with great force, on the part of the defendant, that there are a great many things in his conduct which could never be expected of a sane man, and which are only explainable on the theory of insanity. The very extravagance of his expectations in connection with this deed—that he would be protected by the men he was to benefit, would be applauded by the whole country when his motives were made known—has been dwelt upon as the strongest evidence of unsoundness.

"Whether this and other strange things in his career are really indicative of partial insanity, or can be accounted for by ignorance of men, exaggerated egotism, or perverted moral sense, might by a question of difficulty. And difficulties of this kind you might find very perplexing if you were compelled to determine the question of insanity generally, without any rule for your guidance.

"But the only safe rule for you is to direct your reflections to the one question which is the test of criminal responsibility, and which has been so often repeated to you, viz., whether, whatever may have been the prisoner's singularities and eccentricities, he possessed the mental capacity, at the time the act was committed, to know that it was wrong, or was deprived of that capacity by mental disease.

"In all this matter, there is one important distinction that you must not lose sight of, and you are to decide how far it is applicable to this case. It is the distinction between mental and moral obliquity; between a mental incapacity to understand the distinctions between right and wrong, and a moral indifference and insensibility to those distinctions. The latter results from a blunted conscience, a torpid moral sense or depravity of heart; and sometimes we are not inapt to mistake it for evidence of something wrong in the mental constitution. We have probably all known men of more than the average of mental endowments, whose whole lives have been marked by a kind of moral obliquity and apparent absence of the moral sense. We have known others who have first yielded to temptation with pangs of remorse, but each transgression became easier, until dishonesty became a confirmed habit, and at length all sensitiveness of conscience disappeared.

"When we see men of seeming intelligence and of better antecedents reduced to this condition, we are prone to wonder whether the balance wheels of the intellect are not thrown out of gear. But indifference to what is right is not ignorance of it, and depravity is not insanity, and we must be careful not to mistake moral perversion for mental disease.

"Whether it is true or not that insanity is a disease of the physical organ, the brain, it is clearly in one sense a disease, when it attacks a man in his maturity. It involves a departure from his normal and natural condition. And this is the reason why an inquiry into the man's previous condition is so pertinent, because it tends to show whether what is called an act of insanity is the natural outgrowth of his disposition or is utterly at war with it, and, therefore, indicates an unnatural change."

CHAPTER VI.

IDIOCY, IMBECILITY, AND DEMENTIA.

I. Idiocy.

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I. IDIOCY.

§ 682. Idiocy, when complete, is marked by an entire absence of reason.[1] The moral as well as the mental faculties are undeveloped. There is generally great imperfectness in speech, dependent sometimes on malformation, sometimes on a deficiency in or want of the powers of imitation, so that even when the hearing and speech are both entirely mature, the patient remains unable to do more than in the one case to show his knowledge of the existence of sound, and in the other to give utterance to noises not above, if equal to, those of the brute creation. Taste and smell are equally imperfect. In many cases there is an inability to perceive odors, and in most nothing but the coarsest discrimination in the selection of articles of food. Wallowing in personal filth, devouring even excrement

Mental and moral faculties undeveloped.

[1] *Supra*, § 1; Siebold, § 200; Feuchtersleben, London ed. p. 354; Morel, i. p. 52; Taylor, Med. Jur. (1873), 742; Esquirol, 466; 19 Journ. Ment. Sci. 169.

with apparent avidity, indisposition to eat at all unless food be placed directly before the eye, drinking urine with as little appearance of distaste as water, are incidents one or more of which are to be found in almost every case of idiocy. And the same low grade of sensibility and of flexibility is found in the purely physical system. The nerves are almost torpid. Limbs sometimes have been amputated without apparent pain, and Esquirol even tells us of labor having been undergone without the patient being conscious of the fact or its meaning. The arms are frequently of unequal length, and misshapen; and the limbs generally are crooked and feeble. A careless and broken gait distinguishes them in most cases. Even the eyes are defectively hung, and seem incapable of poising themselves at a right level. And in the lower class of cases there is sometimes so great a defectiveness of vision as to prevent the patient from perceiving the most obvious objects. And, even when the powers of vision and of motion exist, the intellectual powers are sometimes so attenuated as to make attempts to reach a desired point entirely abortive, though there be entire muscular power for such a purpose.

Variations in this respect.

§ 683. While, however, the reasoning powers are almost entirely defective, there is sometimes a perceptible, though unequal, development of the moral sentiments. Self-esteem, love of approbation, religious awe, sometimes assume a supremacy over the system, which is the more marked because it is checked by no countervailing qualities. Dr. Rush tells us of an idiot who spent his life in little acts of benevolence to others, though, in the dispensation of them, as well as all other points in his life, he showed no reasoning powers whatever. Religious veneration is sometimes developed to an exaggerated degree, and expended upon the most unnatural objects. Vanity—such as that which distinguishes some branches of the brute creation—finds in idiots a pregnant place. And Esquirol gives us numerous instances in which the talent for thieving, and that to a very remarkable extent, was found associated with entire vacuity of mind in all other relations. The same observation applies, though in a much less marked extent, to the sexual propensities.

§ 684. "Idiocy," says Dr. Maudsley,[1] "is indeed a manufac-

[1] Body and Mind, London, 1870, p. 44.

tured article; and, although we are not always able to tell how it is manufactured, still its important causes are known and are within control. Many cases are distinctly traceable to parental intemperance and excess. Out of 300 idiots in Massachusetts, Dr. Howe found as many as 145 to be the offspring of intemperate parents; and there are numerous scattered observations which prove that chronic alcoholism in the parent may directly occasion idiocy in the child. *I think, too, there is no reasonable question of the ill effects of marriages of consanguinity; that their tendency is to produce degeneracy of the race, and idiocy is the extremest form of such degeneracy.*"[1]

Connection with consanguineous marriages.

§ 685. The following classification is from Dr. Howe:—

"Idiots of the lowest class are mere organisms, masses of flesh and bone in human shape, in which the brain and nervous system have no command over the system of voluntary muscles; and which, consequently, are without power of locomotion, without speech, without any manifestations of intellectual or affective faculties.

Classification.

"Fools are a higher class of idiots, in whom the brain and nervous system are so far developed as to give partial command of the voluntary muscles; who have, consequently, considerable power of locomotion and animal action, partial development of the intellectual and affective faculties, but only the faintest glimmer of reason, and very imperfect speech.

"Simpletons are the highest class of idiots, in whom the harmony between the nervous and muscular systems is nearly perfect; who, consequently, have normal powers of locomotion and animal action, considerable activity of the perceptive and affective faculties, and reason enough for their simple individual guidance, but not enough for their social relations."[2]

"It does not take the case out of the definition of idiocy that some particular faculty has been saved from the general wreck.

[1] See statistics as to the effect of consanguineous marriages, Journ. Stat. Soc., June, 1875. As to the effects of restraint on the liberty of marriage, Contemporary Rev., Aug. 1873. See also 21 Journ. Ment. Sci. 623.

[2] Second Report of the Legislature of Massachusetts, by the Commissioners appointed to inquire into the condition of idiots within the Commonwealth, by S. G. Howe, pp. 147. Boston, 1848. Senate Doc. See a classification by Dr. Ireland, 18 Journ. Ment. Sci. 333.

This is often the case, particularly with music. Thus there is at present in the Salpêtrière a girl idiotic to an extreme degree, who does not speak, and cannot even dress herself. However, her keeper has recently discovered in her a decided taste for music. She often can repeat faithfully a whole passage of music played or sung to her only once; even if the passage is left incomplete, in repeating it she will terminate it in the right key and tone. A first-rate performer on the piano was brought to play with her, and her transports amounted almost to frenzy. At certain passages of rapid transition from flats to sharps, she uttered cries of transport, and commenced biting her fingers to calm her emotions. She is an immense eater, and greedily snatches at fruit; but the moment she hears the instrument, she stops until the music has ceased."

Dr. Howe mentions an idiot who had an astonishing power of reckoning. "Tell him your age, and he will in a very short time give you the number of minutes."

Cranial measurements.

§ 686. The following statement by Esquirol will throw much light on this phase of mental unsoundness: "With each case of idiocy which I have published in this chapter I have also given the admeasurements of the head taken during life. By bringing them together, we may compare the means with the results obtained by my young confrères; time will not permit me to do it. For those who are fond of this kind of investigation, I subjoin a table of the mean results of admeasurement of the head taken from a woman in the enjoyment of good health, and from plaster casts, taken after their death, in the case of thirty-six insane women, seventeen imbeciles, and seventeen idiots. In the case of three idiots, whose heads were very small, the admeasurements were taken from the crania.

"TABLE OF CRANIAL ADMEASUREMENTS.

	Circumference.	Antero-posterior curvature.	Antero-posterior diameter.	Transverse diameter.	Total.
Women in a state of health .	21.87 in.	13.30 in.	6.98 in.	5.29 in.	47.44 in.
Insane	20.82	11.50	6.96	5.67	44.95
Imbeciles . . .	20.19	11.49	6.69	5.63	44.
Idiots	19.92	11.26	6.85	5.39	43.42
Idiots—Microcephalous . .	15.07	7.51	4.88	4.17	31.63

"From this table we learn: 1st. That the circumference of the head, according to admeasurements taken among women enjoying the use of their reason, from insane women, imbeciles, and idiots, diminishes in an almost equal proportion from the women in the enjoyment of usual health to the idiot, deprived even of instinct. 2d. That the fronto-occipital curvature diminishes in a remarkable degree from the women in sound mind to the insane female, whilst no variation is noticed in the insane person to the imbecile, and a difference of but six millimetres between the latter and idiocy. 3d. That the fronto-occipital diameter is the same in the case of the women enjoying the use of their reason and the insane women, and that there is a diminution of but six millimetres between the insane person and the idiot, while the difference is enormous on passing to the lowest degree of idiocy. 4th. That the bitemporal diameter is more considerable in the case of the insane women, and even the imbecile and idiot, than in that of a woman possessing the ordinary degree of intelligence. 5th. That, if we suppose that the sum of those four admeasurements expresses the volume of the brain, it follows, that, the volume of this organ diminishing in the same proportion with the intellectual capacity, that of the cranium would be the expression of this capacity."[1]

Non-congenital idiocy may exist without disease.

§ 687. "In that remarkable obliteration of the mental faculties," says Abercrombie, "which we call idiocy, fatuity, or dementia, there is none of the distortion of insanity. It is a simple torpor of the faculties in the higher degrees, amounting to total insensibility to every impression; and some remarkable facts are connected with the manner in which it arises without bodily disease. A man mentioned by Dr. Rush was so violently affected by some losses in trade that he was deprived almost instantly of all his mental faculties. He did not take notice of anything, not even expressing a desire for food, but merely taking it when it was put into his mouth. A servant dressed him in the morning, and conducted him to a seat in the parlor, where he remained the whole day, with his body bent forward and his eyes fixed on the floor. In this state he continued nearly five years, and then recovered completely and rather suddenly. The account which he afterwards gave of his condition during that

[1] Esquirol on Insanity. Lea & Blanchard, Philadelphia, 1845, p. 473.

period was, that his mind was entirely lost, and that it was only about two months before his final recovery that he began to have sensations and thoughts of any kind. These at first served only to convey fears and apprehensions, especially in the night-time. Of perfect idiocy produced in the same manner by a moral cause, an affecting example is given by Pinel. Two young men, brothers, were carried off by the conscription, and in the first action in which they were engaged, one of them was shot dead by the side of the other. The survivor was instantly struck with perfect idiocy. He was taken home, where another brother was so affected by the sight of him that he was seized in the same manner; and in this state of perfect idiocy they were both received into the Bicêtre. I have formerly referred to various examples of this condition supervening on bodily disease. In some of them the affection was permanent, in others it was entirely recovered from."[1]

Occasional features.

§ 688. "Of these half-witted persons," remarks Dr. Mayo, "the former indulges a love of grapes, the latter a love of bloodshed: the process of thought in each case is that of a *deficient* understanding, which could neither prevent the one from stealing grapes, nor the other from committing violence under the influence of opportunity, but rather forwarded the crime by suggesting excuses." "An idiot," says Dr. Hainsdroff, "in the Hospital of Salzburg, appearing to be singularly insusceptible of fear, an experiment of an appalling character, and of appalling consequences, was made upon him, as a means of putting his susceptibility to the test. It was proposed to make the impression upon him that he saw a dead man come to life. A person accordingly laid himself out as a corpse, enveloped in a shroud; and the idiot was ordered to watch over the dead body. The idiot, perceiving some motion in the corpse, desired it to lie still; but, the pretended corpse raising itself in spite of this admonition, the idiot seized a hatchet, which unluckily was within his reach, and cut off first one of the feet of the unfortunate counterfeit, and then, unmoved by his cries, cut off his head. He then calmly resumed his station by the real corpse; a strong illustration of the dangerous hypothesis of harmlessness, as connected with this state of mind."[2]

[1] Abercombie on the Intellectual Powers, pp. 273, 274. See for a case of acquired idiocy, 21 Journ. Ment. Sci. 82.

[2] Mayo on Med. Test. in Lunacy, pp. 93, 94.

§ 689. As the different races of men, says M. Renaudin, have a characteristic physiognomy, and as individuals reflect in their features the most salient points of their moral idiosyncrasy, so the idiot in this respect presents a peculiar stamp which the least discerning can recognize. It is a type which can be distinguished in all its varieties, even when the external conformation of the head does not differ much from the normal proportions. But that which strikes us most in this class is the want of symmetry, not only in the encephalic organ, but also in the other parts of the body; and if sometimes the physiognomy is deceitful in this respect, the other parts of the organism soon reveal to us the want of co-operation indispensable to the complete development of man. It is rather by an observation of the whole constitution than of its separate parts that the essential characters of this infirmity are to be detected. Idiots generally deceive in their age, which always offers at the different periods of their existence a ridiculous admixture of decrepitude and puerility. The hypertrophy of certain glands, the flaccidity of the tissues, malformation of external essential organs, absence of all proportion in the length of their limbs, difficulty and uncertainty in their movements, which are almost convulsive, the retraction of certain tendons, an arrest of development in the figure and in muscular contractility—such are the general appearances that characterize the idiot in his external conformation. His mode of living is in keeping with this degradation of form, and furnishes us with the means of perceiving some of the relations existing between the physical and the moral. His language is scarcely rudimentary. He does not think, has nothing to say, and nothing in him calls for the vocal motion. When, however, this *mutism* is not idiopathic, he can be made to articulate certain words, and his movements can be placed under some moral control; but in undergoing this external influence he still rests faithful to that automatism which is his principal characteristic. It is always a material and instinctive impulse that controls. The idiot shows, in the satisfying of his wants, a brutality in close connection with the irregularity of all his actions, and the want of balance of his functions, which all coincide with personal instinct. He yields himself to onanism with a revolting cynicism; he eats with a voracity that defies everything, and which proves how obtuse his sensibility is, although he in fact suffers more than any other

Idiocy easily recognizable.

the unhappy effects of climacteric changes. Finally, in spite of the violence of certain appetites, the functions are so incompletely performed, that we must not be surprised to see these unfortunates very short-lived. If, on the one hand, nothing has wasted life, nothing, on the other hand, has vivified it, and one can easily conceive that it is extinguished, since it is without essential nourishment and without object.

The psychical element plays no part in such an organization. External influence is unable to develop it, since the somatic element is not in a condition to receive it; and as to spontaneousness, one can with but difficulty perceive the germ. So, when these degraded beings, impelled by a brutal instinct, or obeying another's will whose instrument they are, commit a culpable act, all the world agree in not imputing to them any moral responsibility.[1]

Idiocy, says M. Falret, cannot, strictly speaking, figure amongst the forms of insanity. In this degraded state man is fallen below the brute; he does not even possess the instinct of self-preservation. It is necessary for charity not only to bring him the food required for his nourishment, but to place it in his mouth, and to protect him against the mischievous influences which surround him, and against all destructive causes. Instead of language, the exclusive appendage of man, since it is the expression of thought in all its development, the complete idiot only utters certain harsh, savage inarticulate sounds. Instead of that firm, assured step which executes the exact command of the will, the rough, disorderly movements of idiots seem only phenomena of irritability. Besides, they are often immovable, bent down towards the ground, and only execute a kind of rocking movement, balancing forward and backward, to the right and to the left. Without doubt this is the extreme degree of idiocy, for there are idiots less degraded in their organization and consequently in their manifestations; but, unfortunately, to this feeble development of the intelligence is too often joined either an absolute want of character or low tastes, incitations to a brutal lasciviousness, to robbery, pyromania, and ferocity, which they turn against themselves and against inanimate objects.[2]

[1] See Etudes Psychologiques sur l'Alienation Mentale, par L. F. E. Renaudin, p. 170, Paris, 1854.

[2] See Leçons Cliniques, de M. Falret, p. 243, Paris, 1854.

§ 690. Cretinism finds no place in the United States, and cannot, therefore, claim here extended consideration.[1]

II. IMBECILITY.

§ 691. Imbecility having almost as many degrees as it has victims, it becomes the task of psycho-forensic medicine to assign a line of demarcation within which the judge is to declare the responsibility of the agent to cease to exist. But this problem is only so far capable of solution as we are enabled to detect and recognize the existence of imbecility in general, and to estimate its relation to a given action; the personal discretion of the tribunal must always have considerable scope in all cases near the boundary line. In order to obtain as firm a common ground as possible, it becomes advisable to subdivide and classify imbecility, particularly where it depends upon particular diseased conditions capable of ascertainment and distinction. In this respect we distinguish, in the first place, *imbecility with* and *imbecility without concomitant insanity*.

The subject of *aphasia* has been already distinctively discussed.[2]

§ 692. *Imbecility with concomitant insanity* presents the following subdivisions:—

[1] The student, however, who seeks for particular information as to its character, is referred to the following treatises: Etudes des Maladies Mentales, de M. Morel, tome i. p. 64, Paris, 1854. Gedanken über Kropf und Cretinismus als Beitrag zur Homatologie und Homonymie. Von Joh. Mich. Huber, Gerichtswundarzt zu Ried in Tyrol. Mit einer Abbildung. (Medecin. Jahr. des k. k. österr. Staats, Mai.) Ueber den Cretinismus in Canton Waadt. in der Schweiz. von Dr. H. Lebert, prakt. Arzt zu Paris. (Archiv für physiologische Heilkunde, VII. B. 6 Heft.) Notice of a very remarkable disease analogous to Cretinism. By Hugh Norris; Med. Times, Jan. 1848. Les goiteux et les cretins de la Savoie; Annales de Thérapeutique, 1848. Mais, Ueber den Cretinismus in grossen Städten und dessen Aenlichkeit mit dem in den Alpen. Von Dr. Behrend. (Gaz. des Hôpitaux, 1848. Nos. 6 and 7.) Cretinismus als genetisch—contagiöse Endemie in Neudenau, etc. Bad. Annalen d. Staats-Arzneikunde, 1846. Esquirol, Mental Maladies, etc., 481–2. Sonsburg, über den Cretinismus. Wurzb., 1825. Haüflser, über die Beziehung des Sexualsystems zur Psyche ueberhaupt und zum Cretinismus ins besondere. Würzb., 1826. See also a very valuable report on this point, by Samuel Kneeland, Jun., M.D., read before the Boston Soc. for Med. Improvement, Jan. 13, 1851. Am. Journ. of Science, 1851, and a review of same in Journal of Physchological Med., vol. iv. p. 366. See also "A Physician's Holiday, or a Month in Switzerland in the Summer of 1848, by John Forbes, M.D., F.R.S.," London, 1848, in which the management of the Cretins is fully described.

[2] *Supra*, §§ 324–327.

When accompanied with insanity.

1. The original imbecility which has lapsed into unsoundness of mind. The nature of the latter will determine, in the first instance, in how far the patient is amenable to the penal laws in a given case; but the fact of imbecility will always favor the psychological arguments in favor of irresponsibility.

2. Imbecility supervenes upon the course of a mental disorder, and manifests itself particularly in the form of a failure of memory. The question of responsibility will depend, in this case, upon the same principles as stated in the last preceding head.

3. *Specious imbecility*, as in the case of *melancholia attonita*, and as such, will receive but little attention at the hands of the forensic physician.

4. *Imbecility with confusion of mind.* This is found side by side with a failure of memory, and a more or less conspicuous incoherence and inconsistency of the perceptions, and a certain agility and activity of the super-physical life. It is either a primary or secondary form, and in the *former* case it may be consequent upon severe diseases of the brain, epilepsy, intemperance, sexual excesses, and senility;[1] in the *latter* case it may arise from the various forms of mental unsoundness, and may be considered as always excluding the idea of moral responsibility.

§ 693. 5. Imbecility remaining after the patient has recovered from an attack of insanity. This, when sanity is restored, is not a sufficient reason for suspending the responsibility of the agent, but may often deserve the attentive consideration of the judge in the moulding of the sentence. It should be remembered, however, that

[1] In senility its effects are touchingly illustrated in the following passage, from the life of the late Wm. Jay :—

"At length, however, this prop fails him. After thirty years of uninterrupted domestic happiness, this excellent and amiable woman was stricken with an extraordinary malady, resulting in such a prostration of mental and physical powers, as rendered her, from that time forward, no longer the support of her husband in his trials, but the object of his deep solicitude and tender care. It had become her almost invariable habit to call things by names the reverse of what was right, and of what she herself intended.

"She spoke of a drop of bread, and a thin bit of water; she called the black white, and the white black; the cold heat, and the heat cold; preaching was hearing, and hearing was preaching; in the morning she wished you good evening, and in the evening good morning." A similar peculiarity marked the last few months of Lord Denman's life. See *supra*, § 324.

insanity, once proved, is presumed to continue, so far as concerns responsibility, until restoration to reason is positively shown.

§ 694. *Imbecility without insanity* has several gradations, all being separate denominations; the highest degree is called *idiocy*. Next to this is *imbecility* proper; *dulness*, *feebleness*, *stupidity*, are inferior grades of a stunted growth of mind. The causes which, in the higher stages, exclude understanding and self-control are the more potent, as no education has been imparted here, or, if imparted, has produced no effect. The lower stages do not justify the physician in casting a doubt upon the existence of legal responsibility. They are for the consideration of the judge alone, and are interesting in this point of view, because simpletons and fools often have a touch of malice, brutality, ill-will, and mischief in their dispositions, and may be led, by teasing and ill-treatment, to vindictive hatred, revenge, and violent outbursts of anger.

When without insanity.

§ 695. "In some circumstances," says M. Renaudin, "the idiotic germ is less prominent, nothing tends to reveal it in infancy, and the early years lead us to expect a normal ulterior development. But it may happen that a severe disease, deeply affecting the organism, supervenes, or the subject may have been submitted to an intellectual labor above his powers, and at a given moment an arrest of development, as much in the physical as in the moral system, shows itself. This condition sometimes supervenes even without the action of any apparent cause, and then we can only attribute it to the influence of this idiotic principle. Instead of pursuing the course marked out by the laws of nature, it is arrested at a point of development, rarely transitory but most generally permanent, which is known everywhere under the name of imbecility. The physical organization in imbeciles offers less abnormities than that of idiots; the body is straighter, and, if the physiognomy is less repulsive and shows a little more regularity in its features, it exhibits but little animation. The feelings are seen in their rudimentary state in this class of beings; they are susceptible of a more advanced education, and, when they belong to a family of easy circumstances, they can be made to submit themselves to the habits of a regular life. The impressions they receive are sufficiently durable, providing they do not overstep a sufficiently restricted limit. They

Distinguished from idiocy.

are susceptible of a certain amount of memory, which in some cases reaches a very remarkable height. Sometimes the ideas they acquire are very limited, and their intellectual spontaneousness is on a footing with the small development of their physical spontaneousness. Although less stupid than the idiot, automatism is the characteristic trait of the imbecile. He never gives the impulse, he receives it; and it is amongst the imbeciles that an asylum especially finds valuable aids in its internal service. If the effective sentiments are but feeble, the instinct of the feeling of personality shows itself perhaps in an absurd vanity, or in a savage egotism in the satisfaction of wants whose stimulus is ordinarily very energetic. Hence an excessive irritability that readily degenerates into mania, or a malicious cunning, in order to obtain the thing coveted. The imbecile has but few ideas; and as he knows but little abandons himself to his impulses when fear does not control him. But little capable of distinguishing between good and evil, he may be a dangerous instrument in criminal hands. The imbecile commits a murder with coolness, shows often a great depravity of tastes, and it is only an exception if you can perceive in him any rudimentary traces of the moral sense. It is at this point that his intellectual aptitude ceases, and we can easily understand how a like condition necessarily excludes all responsibility."[1]

Illustration of this distinction.

§ 696. The Emperor Napoleon hit upon a very happy illustration of the distinction between two of the above-mentioned phases. In one of his conversations with Las Casas, he said that there was such a thing as "*folie innocente*," and "*folie terrible*"—a fatuous state which is safe, and one which is dangerous. A fatuous person, "*un fou*" of the first kind, the emperor describes as reasoning, with the proprietor of a vineyard in which he was trespassing, thus: "Why, here are we two: the sun sees us both; therefore, I have a right to eat grapes." The "*fou terrible*," he proceeds, "is he who cuts off the head of a man whom he found sleeping under a hedge; then hides himself behind it, in order to witness the surprise—*embarras*—of the body when waking."

§ 697. "Dr. Rush says," we quote from Dr. Ray, "that in the course of his life he has been consulted in three cases of moral im-

[1] Renaudin sur l'Alienation Mentale, p. 173. Paris, 1854.

becility; and nothing can better express the true character of their physiology, than his remark respecting them. 'In all these cases,' he observes, 'there is probably an original defective organization in those parts of the body which are occupied by the moral faculties of the mind'—an explanation which will receive but little countenance in any age that derives its ideas of the mental phenomena from the exclusive observation of mind in a state of acknowledged health and vigor. To understand these cases properly, requires a knowledge of our moral and intellectual constitution, to be obtained only by a practical acquaintance with the innumerable phases of the mind, as presented in its various degrees of strength and weakness, of health and disease, amid all its transitions from brutish idiocy to the most commanding intellect."[1]

III. DEMENTIA.

Dementia originates in mental depression.

§ 698. Dementia is to be distinguished from general mania in the fact that the former originates from *depression*, the other from *exaltation* of the natural powers.

Analogy between idiocy and dementia.

§ 699. In the course of clinical lessons delivered at Bicêtre, M. Ferrus gives an account of the different intellectual debilities in a way that throws a strong light upon these difficult questions.

Between idiocy and dementia, he says, there is a most striking analogy. In both cases, human intelligence is abolished; it no longer possesses the means of perfectibility. But the analogy ceases in examining the producing causes. With the idiot, deprivation of reason is congenital; the demented, on the contrary, arrives progressively at the total loss of his faculties. Dementia is the destruction of the intellectual faculties, supervening after the period of puberty: it is a kind of debility which appears either in an insensible manner or with the rapidity of lightning—breaking, more or less, all the connections which unite the man with the rest of the world.

The characters of dementia are sufficiently decided, so as not to be confounded with those of other mental affections. In idiocy, the faculties of the mind have never existed, or have been destroyed before their complete development. In dementia, you may still

[1] Ray on Insanity, p. 90.

possibly see some traces of an intelligent past; but it betrays in vain its past perfection: it is stamped forever with the seal of feebleness and nullity, and destined to be extinguished by a kind of exhaustion of nervous influence.

Paralytic stupidity consists in an accidental, sudden, complete suspension of the intellectual, moral, and instinctive faculties, as well as of the corresponding sensibilities. It has for its cause a sudden and violent physical or moral shock; it is distinguished from dementia by the rapidity of its appearance, the intensity of its symptoms, their frequent remission and exacerbation, and especially by the possibility of a comparative cure.[1]

Dementia, says Esquirol, is characterized by the enfeeblement of the sensibility, intelligence, and will. Incoherence of ideas, want of intellectual and moral spontaneousness, are the signs of this affection. The man suffering from dementia has not the faculty of properly receiving objects, of noticing their relations and comparing them, of preserving a complete remembrance of them; whence results an impossibility of reasoning correctly. In dementia, he adds, the impressions are too feeble; it may be because the sensibility of the organs, or of the sensations, is weakened; or it may be because the brain itself has not sufficient power to perceive and retain the impression that is transmitted to it. From this it necessarily results that the sensations are languid, obscure, and incomplete. Individuals in dementia are not susceptible of a sufficiently strong attention—objects only strike them in an obscure and false manner; they can neither compare nor associate ideas, nor abstract them; the organ of thought has not sufficient energy—it is deprived of the tonic force necessary to the integrity of its functions. Then the most incongruous ideas succeed each other, following each other without connection and without motive: the matter is incoherent: the patient repeats words and entire phrases without attaching to them distinct sense; he speaks, as he reasons, without any consciousness of what he is saying.[2] The demented, in spite of the general decrepitude of his organic functions, is not freed from the laws of action and reaction. There are periods in his existence when the old phenomena of possession appear to be renewed.

[1] Ferrus, leçons cliniques faites à Bicêtre.

[2] Esquirol de la demence, p. 221.

When he is agitated, he cries and tears his clothes, and may, perhaps, perform some dangerous actions. The hallucinations are often sufficiently intense to provoke veritable attacks of fury; but this rage lasts but a little while; it is appeased like the anger of a child.

The demented from this excited state falls back into his ordinary automatonism. He has no more any wishes, hate, or tenderness; he holds the objects formerly so dear to him in the greatest indifference; he sees his relations and friends without pleasure, and leaves them without regret. He is not disquieted by any privations imposed on him; and pleasures obtained for him gratify him but little. What goes on around him does not affect him. The events of life are as nothing to him, since he is unable to attach any remembrance, any hope to them: indifferent to everything, nothing gratifies him. He laughs and plays whilst other men are afflicted, and weeps when all the world are satisfied. If his position discontents him, he does nothing to change it. His determinations are vague and uncertain: he is a perfect automaton, that has not sufficient energy to be ungovernable: his isolation is the more necessary, as he yields himself to acts which are the result of the abolition of conscience, and as he becomes but too often the sport and the victim of those who wish to take advantage of his condition.[1]

§ 700. Dementia, according to Falret, is a period, and not a true form of mental unsoundness. Amongst the demented, who are only the chronic insane arrived at an advanced stage of the disease, there are some who are almost like maniacs, and some who remain motionless, like hypomaniacs. There are others in whom are seen some predominant ideas—resembling, in this respect, monomaniacs; but it is difficult to classify them. If they speak, their unconnected words have no relation, and convey no sense; often even this is not due to incoherence alone, but to the absence of ideas; it is a flow of words without thoughts.

Falret's position that dementia is a period, not a form of mental unsoundness.

If they remain quiet and silent, their countenances express neither concentration nor passion, but dulness and stupidity; they seem, at least in extreme cases, to be ciphers both in understanding and character. The observer, in fact, sees in them only ruins: he

[1] See Morel sur les Maladies Mentales, tome i. p. 402. Paris, 1852.

sees before him all the moral and intellectual elements in an almost complete state of isolation from one another. This separation is a kind of dissolution which betrays the radical blow that has been inflicted upon the psychical forces, and destroys all hope of ever seeing these elements united and co-ordinate. If sometimes a gleam of intelligence sparkles in this chaos, and in the midst of these ruins—far from consoling, it adds to the gloom, so manifest is it that the patient himself is neither its author nor its witness. Everything, in fact, in dementia, betrays an inability to form ideas, to experience sentiments, to possess a will. It is the tomb of reason, with the exception of some flashes that mark it, and which are, as it were, the reflections of the ancient brilliancy of the mind.[1]

Description of dementia by Ray.

§ 701. "Dementia," says Dr. Ray, "is distinguished from general mania, the only other affection with which it is liable to be confounded, by characters that cannot mislead the least practised observer. The latter arises from an exaltation of vital power, from a morbid excess of activity, by which the cerebral functions are not only changed from their healthy condition, but are performed with unusual force and rapidity. The maniac is irrational from an inability to discern the ordinary characters and relations of things, amid the mass of ideas that crowd upon his mind in mingled confusion; while in dementia the reasoning faculty is impaired by a loss of its ordinary strength, whereby it not only mistakes the nature of things, but is unable, from want of power, to rise to the contemplation of general truths. The reasoning of the maniac does not so much fail in the force and logic of its arguments, as in the incorrectness of its assumptions; but in dementia the attempt to reason is prevented by the paucity of ideas, and that feebleness of the perceptive powers, in consequence of which they do not faithfully represent the impressions received from without.

"In mania, when the memory fails, it is because new ideas have crowded into the mind, and are mingled up and confounded with the past; in dementia the same effect is produced by an obliteration of past impressions as soon as they are made, from a want of sufficient power to retain them. In the former the mental operations are

[1] See Etudes cliniques sur l'Alienation Mentale, par M. Falret, p. 541. Paris, 1854.

characterized by hurry and confusion; in the latter by extreme slowness and frequent apparent suspension of the thinking process. In the former, the habits and affections undergo a great change, becoming strange and inconsistent from the beginning, and the persons and things that once pleased and interested being viewed with indifference or aversion. In the latter, the moral habits and natural feelings, so far as they are manifested at all, lose none of their ordinary character. The temper may be more irritable, but the moral disposition evinces none of that perversity which characterizes mania.

"In dementia, the mind is susceptible of only feeble and transitory impressions, and manifests little reflection even upon these. They come and go without leaving any trace of their presence behind them. The intention is incapable of more than a momentary effort, one idea succeeding another with but little connection or coherence."[1]

[1] Ray on Insanity, pp. 292, 293.

CHAPTER VII.

DELIRIUM.

I. General Delirium.

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Systematization of frenzied conceptions a peculiar feature of delirium, § 703.
Puerperal mania, § 704.
Explanation of delirium by Griesinger, § 705.

II. Partial Delirium.

1. *Mania* or *amentia occulta*.

The term first used by Platner, § 706.
Authorities countenancing the theory, § 707.
Mania occulta not a defence unless insanity be proved *aliunde*, § 708.
Mania occulta distinct from *mania transitoria*, § 709.

2. *Mania transitoria*.

Mania transitoria is a sudden insane fury, § 710.
Observations on the subject by Devergie, § 711.
Dangers attending recognition of this mania, § 718.

I. GENERAL DELIRIUM.

§ 702. What distinguishes delirium from the delusions of the senses is that in the latter the sensational faculties are really acted upon, subjectively, though in an eccentric manner, while in the former the interior reproductive activity of the brain predominates in the generation of phantoms.[1] Consciousness is disturbed at the same time, and there is incoherent speaking and action, as if it were a waking dream. External objects are perceived indistinctly, or not at all, and on the whole there is the less delirium, the more activity there is in the peripheric nerves, for which reason hydrocephalic children generally relapse into delirium when they cease vomiting. The external senses may, however, be at the same time open to perceptions, and may convey them; but the patient is so controlled by his internal dreams as to act as if they did not exist. Hence there is, accordingly, a predominance of dreams, which deprives the individual of the possibility of the power of maintaining a corresponding relation with

Characteristics of.

[1] Haygen, vol. ii. p. 707; Schürmayer, etc., § 555.

the external world. Delirium may, therefore, be defined as a state of dreams brought on, not by sleep, but by disease. Like a dream, a delirium may become active, the beginning of which is the speaking delirium. Where a crime or misdemeanor proceeds from a delirium, there is no freedom of agency, *i. e.*, the action is to be regarded as the product of insanity.

§ 703. The most remarkable phenomenon of mental unsoundness (we translate from Morel) is unquestionably delirium, whether it shows itself in words or deeds. Delirium, considered as an essential symptom of insanity, possesses a type of continuity, connects itself with lesions of a special nature, and presents altogether the elements of a certain systemization of the frenzied conceptions. This systemization alone gives to the delirium which produced it a particular stamp. It shows what has been called the fixing of ideas, and that logic peculiar to the insane, that leads them to the justification of the falsest conceptions and the most deplorable acts. If it were otherwise, who could have flattered himself that he had escaped insanity? for we have all suffered in a more or less degree the phenomena of delirium. We are delirious during fever, under the influence of spirituous liquors, as also of some narcotics. Febrile delirium is a generic term comprising the universality of abnormal phenomena which can in a more or less permanent manner, in a given disease, hinder the association of our ideas, or which may prevent that association in the way of producing illusions and hallucinations of all kinds.

Systemization of frenzied conceptions a peculiar feature of delirium.

The word insanity is likewise a generic expression for pointing out the universality of the abnormal phenomena which, under the united influence of physical and psychical causes, can, in a more or less permanent manner, pervert our manner of feeling and seeing, or, in other words, bewilder our understanding.

In this point of view, febrile delirium and the delirium of madness are the same, inasmuch as deliriums are identical; but it is excessively important not to confound the symptoms with the diseases that produced them.

An invalid suffering from an acute disease approaches the period of convalescence. At the approach of night, or whenever he shuts his eyes, fantastical apparitions besiege him. He himself recognizes that these painful impressions are the results of his fever,

or, if he does not recognize it at the first glance, he receives the explanations of those surrounding him. He raves before sleeping, and it is not strange if he still raves under the influence of the depression as well as of exaltations of the organs of the senses. Upon awaking, he makes known to his relations and friends the fatiguing sensations that his dreams have produced, and seems to search with eagerness for explanations to reassure him. As he returns to consciousness, the motives of his judgment become more certain, the tumult of his bewildered senses is appeased, the nights are quieter, and, when convalescence follows an ascending course, there only remains a vague and confused remembrance of the stormy scene through which he has passed.

Things, unfortunately, do not so proceed when the delirium has a tendency to the permanent or chronic form; and it is this which makes the essential difference between properly called febrile delirium and maniacal delirium. There may be a period when these two deliriums possess the same external characteristics on account of the similitude of the perverted sensorial phenomena; but, when the phenomenon of delirium is produced by a maniacal state, it is then a situation which often passes unnoticed in the beginning, but which, as a diagnostic element, it is of the highest importance to describe.

This situation, so painful for the friends, first betrays itself in a perversion of the feelings, and in a complete change in the character and habits of the patient. He becomes impatient and fretful; speaks passionately, and in an unaccustomed tone. He often loses the feeling of modesty, whatever may be his age or education. His friends and relations attribute these distressing phenomena to the effect of the primitive disease which shows itself with all the characteristics of an ordinary febrile delirium. But soon another more trying phenomenon shows itself, greatly aggravating the case. The care bestowed upon the sick person, the marks of the liveliest affection which are shown to him, are repulsed, sometimes with irony and disdain, and sometimes with passion and fury. In ordinary diseases the sick person attaches himself with happiness to everything that tends to recall him to existence. He hears with emotion of the different stages of his disease, and of the delirium which was its consequence; he speaks often of its causes, deplores its effects, and makes innumerable excuses for any malignant or

obscene words which may have escaped him during the delirium. The patient, on the contrary, in whom the insanity is confirmed, will not admit that he was delirious. He sustains the errors of his imagination, and takes them for realities. The hallucinations and delusions of all sorts which he has felt, and which still beset him, fortify him in his madness. Still more, in this he systematizes his delirium, and whatever intellectual energy is left is employed by him in establishing, upon the basis of a desperate logic, motives for the new existence which he is just commencing. Several authors, basing themselves on the fact that the delirium of insanity is often found unaccompanied by fever (*delirium sine febre*), have thought that the train of psychological phenomena that accompanies the delirium of acute diseases is sufficient to mark out the difference between these primitive conditions. This appreciation, though very true on one side, may nevertheless lead us into error. We willingly admit that the delirium of acute diseases is accompanied with redness of the cheeks and turgidity of the face. The expression is troubled, and there are marked changes in the circulation. The eyes are brilliant, respiration often painful, and the excretions involuntary; the language takes an unaccustomed accentuation. The sick person expresses himself sometimes with vivacity, sometimes with great slowness; his sentences and his words are badly articulated; he speaks sometimes to himself, and at other times deep drawn sighs are the only manifestations of intellect. But these phenomena are also to be met with in the delirium of insanity, and especially in the first stages of this disease.[1]

Privation of stimulants, says Morel, and the employment of opiates, generally suffice to restore reason to those persons who are generally not considered as insane unless afflicted with a special chronic subjection to *delirium tremens;* even when the fatal consequences resulting from the abuse of spirits impress upon the delirium, which is its consequence, a form of continuity which has by some authors been pointed out under the name of *drunken madness.* Errors made in this respect may be productive of grave consequences for those who are the victims of them. The following is an example:—

[1] See Etudes Cliniques des Maladies Mentales, etc. M. Morel, tome i. p. 124. Paris, 1852.

In the month of May, 1850, there was brought to the asylum of Moreville a sick person, whom a physician's certificate represented as a dangerous madman. We observed at first in him a very great disorder of ideas, and a peculiar difficulty of expressing himself. The face was pale, and the lips agitated with convulsive movements, and there was a general trembling of the limbs. The employment of opiates and a bath soon removed these appearances, and the next day we had a man in the perfect possession of his faculties before us. The error in this case had arisen from the fact that the physician's certificate had been given without a proper examination of all the causes necessary to a correct judgment. If he had, indeed, gone back to the appreciation of the causes, he would have found out that very grave dissentions existed between two brothers, of whom one was this supposed madman, who, endowed with a violent but feeble character, after having yielded in the strife of discussion, ordinarily sought to console himself in alcoholic libations. It was after having swallowed a too abundant ration that a family quarrel brought its contingent of trouble to the natural excitement that controlled him, and resulted in *delirium tremens*, which, if it had been better appreciated in its origin and effects, would not have brought this person to an insane asylum, and compromised in a certain degree his social position.[1]

Puerperal mania.

§ 704. Puerperal mania deserves a distinct notice, not merely from its distinctive physical origin, but from its distinctive features, which sometimes are erotic ravings, sometimes even homicidal violence.[2] A "homicidal propensity," as we are told by Dr. Taylor, "towards their offspring, sometimes manifests itself in women soon after parturition. It seldom appears before the third day, often not for a fortnight, and in some instances not until several weeks after delivery. The most frequent period is at or about the commencement of lactation, and between that and the cessation of the lochia." According to Esquirol, it is generally attended by a suppression of the lochia and milk. The symptoms do not differ from those of mania generally, but it may assume any of the other forms of insanity; and in one-half the cases it may be traced to hereditary tendency. According to Dr. Burroughs, there

[1] Morel, sur les Maladies Mentales, tome i. p. 146. Paris, 1852.

[2] See *supra*, § 155.

is delirium, with a childish disposition for harmless mischief. The woman is gay and joyous, laughing, singing, loquacious, inclined to talk obscenely, and careless of everything around. She imagines that her food is poisoned. She may conceal the suspicion, and merely avoid taking what is offered to her. She can recognize persons and things, and can, though perhaps will not, answer direct questions. Occasionally there is great depression of spirits, with melancholy. These facts are of some importance in cases of alleged child-murder. This state may last a few hours, or for some days or weeks, and we are told by Dr. Hartshorne, the accomplished American editor, sometimes for months and years; but it generally goes off within a few months, if not earlier. "The murder of the child is generally either the result of a sudden fit of delirium, or of an uncontrollable impulse, with a full knowledge of the wickedness and illegality of the act, so that the legal test of responsibility from a knowledge of right and wrong cannot be applied to such cases. Mothers have been known, before the perpetration of the murder, to request their attendants to remove the child. Such cases are commonly distinguished from deliberate infanticide by there being no attempt at concealment, nor any denial of the crime on detection. Several trials involving a question of puerperal mania have been decided generally in favor of the plea within the last few years. Dr. Ashwell has remarked that undue lactation may give rise to an attack of mania, under which the murder of the offspring may also be perpetrated.[1] Females in the *pregnant* state have been known to perpetrate the crime apparently from some sudden perversion of their moral feelings. I am not aware that a plea of exculpation on the ground of insanity has been admitted in this country under these circumstances."[2]

Explanation of delirium. Griesinger.

§ 705. "The fundamental affection in the maniacal states," writes Griesinger, "consists chiefly in a derangement of the motory side of the soul-life, the effort,

[1] Diseases of Women, 732.

[2] See case Ann. d'Hyg., 1831, i. 374. For an able analysis of the subject of puerperal insanity, by Dr. Reid, see Journ. Psychol. Med., 1834, pp. 128, 284. Taylor's Med. Jurisprudence, pp. 594, 595. See as to the legal responsibility in such cases, *supra*, §§ 146–162. See also Dr. Storer's excellent treatise on Insanity in Women, Boston, 1871.

and of such a nature, that the latter having become free, unrestrained, and considerably increased, the individual consequently feels impelled to give some outward manifestation of his powers.

"From this tendency to an exaggerated psychical movement from within outwards, from this augmented energy and more extended range of the efforts, from this extravagance of the will, which constitute the centre-point of maniacal derangement, spring, as from a common source, those two forms which in their nature and mode of manifestation are sometimes so essentially distinct. On the one hand, this necessity for the manifestation of the increased mental activity may manifest itself *directly*, being propagated by a continuous impulse to the organs of motion, and there exploding, as it were; whence there ensues a state of great physical restlessness, the patient keeping his muscles in constant play (speech, gestures, movements of the body generally), and perpetually speaking, shouting, weeping, dancing, leaping, storming, etc.; and thus is constituted the form generally called mania.

"Or, on the other hand, the direct result of this more free development of volition may be the development of inordinate vanity, increased self-sensation, and consequently a constant over-estimation of self; and, as attempts at explanations of this disposition, delirious conceptions arise, which now become dominant over the mind, and take the increased activity of the will into their service.

"The patient has now no longer to do with mere general manifestation of energy; but this excitation of the motory side of the soul-life is transformed into *extravagant volition in the form of particular delirious conceptions*, for the most part with much greater outward calm. As soon as such a condition, accompanied by delirious conceptions arising from inordinate self-conceit, has in any degree become fixed, there is founded a state of mental derangement infinitely more serious than that of simple mania. In short, while in the latter form the patient is freed from his exaggerated impulses by their outward manifestation, and again, as we shall soon show, in the pure form of mania, the whole disease is confined to a relatively external sphere of the mental life without profoundly involving the individuality, it is the essential characteristic of this second form of mania, which we designate monomania, that delirious conceptions, false ideas, which arise from over-estimation of self, and therefore relate only to the special self of the

patient, appear, which immediately involve the *ego* itself, and, therefore, the innermost part of the individuality becomes alienated and falsified."[1]

II. PARTIAL DELIRIUM.

1. *Mania* or *amentia occulta.*

§ 706. This leads to the discussion of the so-called *amentia occulta*, or concealed insanity; a phase of disease which has been the cause of much perplexity to the courts, as well as of much animated controversy among psychologists. Is there such a thing as latent insanity, which is undistinguishable by any of the usual psychological tests until the period of the commission of the controverted act? This was affirmed by Platner, by whom the term was first used. "Est igitur amentia occulta nisus et conatus animi oppressi ad actionem violentam, hanc actionem secreto appetentis et molientis, tanquam suæ oppressionus levamen et liberationem." Two cases are cited by him as illustrations. The first is that of a man who was good-natured, but superstitious, hypochondriac, and of weak intellectual powers. He conceived the idea that he was the object of persecution, and of various attempts to bewitch and to poison by deadly perfumes; and he killed the supposed offender, declaring that he would rather be executed than to live as the victim of such enmity. Here, as Liman well remarks, there was no *amentia occulta*, but a case of insanity, exhibiting itself antecedently with great plainness in the common phase of insane delusion as to persecution. The other proof-case given by Platner is that of an alleged pyromaniac girl of seven years, whose irresponsibility on other grounds was abundantly shown.

The term first used by Platner.

§ 707. Undoubtedly some countenance is given to this theory by Dr. Maudsley,[2] by Dr. Castelnau,[3] and by Dr. Jarvis,[4] in their assumption that there is such a thing as mania which is "instantaneous, temporary, fleeting, a mental disorder, which breaks out suddenly, like the sudden loss of sense in some physical diseases, and the subject

Authorities countenancing the theory.

[1] Griesinger's Mental Pathol., Syden. ed. (1871), § 130.

[2] Jour. Ment. Sc. ix. 335.

[3] Annales d'Hygiène Publique, etc., xlv. p. 219, cited by Dr. Jarvis, in a learned appendix to Andrews' Trial, p. 266.

[4] Andrews' Trial, p. 266.

is urged in a moment to automatic acts, which could not have been foreseen." This phase, however, belongs distinctively to the next head.[1]

§ 708. We certainly can conceive of insanity that is latent except at some parenthetical period when it bursts out into mania, and then retires again from observation; but as to this, two remarks are to be made.

Mania occulta not a defence unless insanity be proved *aliunde*.

First. Human law, whether moral or positive, can only draw its conclusions from overt acts. We can conceive of an emigrant, for instance, who in intention is a citizen; but until he declares his intention, and is naturalized, he is not legally to be treated as a citizen. We can conceive of a person intending to give money to a charitable object, but until he evidences his intention by will or deed, the act is not the subject of legal cognition. We can conceive of a person signing a paper under duress; but to make the defence good, duress must be proved. So we can conceive of a person irresponsible through insanity, but, if so, the insanity must be proved. It is true that it may be inferred from an act that in itself is motiveless and passionless, especially when there is evidence of superinducing causes of insanity. But, when the act has motive, whether that motive be passion or interest, and when the act is intelligent, then there can be no defence of *mania* or *dementia occulta*. Insanity must be proved *aliunde* as a prior state, involving derangement of mind.

Secondly. To admit such a disease as a defence would be to make criminal justice powerless. Not only is the disease (if the title be correct) incapable of diagnosis, but there is no case of crime to which the defence, if good, may not be applied. The insensibility of the act by itself cannot prove the disease, for there is no crime, no matter how astute the perpetrator, but betrays, as will hereafter be seen, some incoherence in its preparation; and no maxim is more trite than that crime is in itself folly. Folly, incoherence of some kind, if not barbarous ferocity, are incident to all crimes; and if to these it is permitted to tack *amentia occulta*—an insanity of which the only proof is the nature of the act—then there is no prosecution of crime to which such insanity cannot be successfully pleaded.

[1] *Infra*, § 710.

Thirdly. The assumption rests, in practice, on a *petitio principii.* There is no case of occult insanity mentioned in the books in which patent proof of prior insanity is not offered to show occult disease. The illustrations of this in the cases cited by Platner have already been given. A scrutiny of other cases cited by the advocates of this theory will produce a similar result. In one case the "occult" disease burst out in the state of sleep-drunkenness, a condition in which, as has been shown, the mind is substantively disordered. In another, hereditary insanity was proved; in another, epilepsy; in another, a chronic lesion of the brain; in another, hypochondria. The fallacy of the position may be seen by the following statement: occult insanity is shown by inductive proof of a prior insane state, but, when there is inductive proof of a prior insane state, insanity ceases to be occult.

§ 709. *Amentia occulta* has sometimes, as has been noticed, been blended with *mania transitoria*, or acute transitory mania. This special mania, however, does not necessarily imply, and indeed by its definition excludes, a prior state of occult insanity. *Mania transitoria* will be, therefore, independently considered.

Mania occulta distinct from *mania transitoria.*

2. *Mania transitoria.*

§ 710. *Mania transitoria*, or *furor transitorius*, assumes a sudden, parenthetical, transient, motiveless outburst of insane fury in a person previously and subsequently sane. It is, therefore, to be distinguished from occult insanity (*amentia occulta*), which has just been noticed, in which there is prior insanity which is latent and concealed; from "moral" insanity, as it is called, which assumes a permanent derangement of the moral as distinguished from the intellectual faculties; and from the so-called special manias, such as the homicidal mania, kleptomania, and pyromania, which involve permanent constitutional impulses to particular abnormal acts. *Mania transitoria* not only does not involve, but from its term excludes all chronic insane frames, or states, or impulses. It is from its very nature sudden, causeless, exceptional, parenthetic, and vehemently antagonistic to the patient's usual line of character and type of mind.

Mania transitoria is a sudden insane fury.

§ 711. Upon the question in its general relations we have some excellent observations read by M. Devergie before the Imperial Academy in 1859.

Observation on the subject by Devergie.

"No incentives to the deed, either in passions not sufficiently repressed, or in an acquired fixed idea; antecedents and manners irreproachable; absence of hallucinations; outbreak of insanity manifested by a criminal act, and instantaneous return to reason as soon as the deed was accomplished—these are, according to us, the characters of transitory insanity. Nevertheless, the word *transitory*, perfectly just for the world in general, in the sense that the madness is but transient, though the deed done be of the most criminal description, does not appear to me sufficiently exact for the physician. Individuals of the character described ought not to be considered of sound mind when an idea of crime has suddenly risen within them, when this idea has constituted with them a dominant and irresistible thought, stronger than *the Me*, stronger than the will.

"Antecedents of family, eccentric acts of social life, propensities, tastes more or less perverted, tendencies to moodiness, ideas of suicide, are often manifested many years before the explosion of the irresistible criminal idea. So that to say that *the passage from reason to insanity* can be hasty or instantaneous, in the opinion of the physician is to commit an error. This state has prodromata, as every malady has; and, according to us, *if these prodromata do not exist*, it would be impossible to see in the reported criminal act an act of insanity.

"Moreover, M. Lelut[1] has said, with much truth, in regard to this species of insanity, that, at its commencement, and in the mental tendencies which are the predisposing or constitutional cause of it, insanity is still reason, as reason is already insanity (la folie est encore de la raison, comme la raison est déjà de la folie). This constitutes, for the physician, one of the first elements towards the solution of the question.

"A second datum of great interest, in a medical and moral point of view, is the disproportion which exists between the enormity of the offence and the motive or interest which has led to its committal.

[1] Recherches des Analogies de la Folie et de la Raison, à la suite de son ouvrage Le Démon de Socrate, p. 318.

"If we examine all the criminal processes which have been instituted on the occasion of similar offences, and which have, moreover, been diversely adjudicated upon, but which, for the physician, have been acts of madness, it will be seen that the motive which led to the committal of the deed was not, so far as its consequences were concerned, in relation with the action itself. In other words, the accused, in committing the crime, had in prospect the scaffold; and, even in the case of impunity from it, he derived frequently no advantage, material or moral, from the act which he had committed.

"Now, every important act of a man of sound mind has one end. That end is the attainment of an advantage proportionate to the consequences of the act. When an individual stakes his life upon it, he hopes to obtain in exchange material or moral advantages, more or less considerable, and by which he expects to profit largely.

"If it be asked what are the conditions under which the reputed criminal act is performed, we are at once struck with the want of foresight which has preceded and accompanied its fulfilment. Neither the moment of the deed nor the mode by which it has been effected has been the object of any premeditation. Moreover, the deed has probably been committed at the most unfavorable moment, although the accused had had a thousand opportunities of effecting it in secret.

"Far from avoiding justice, the insane individual, in other respects an upright man, comprehending quickly the enormity of the crime that he has involuntarily committed, occasionally, nay, most commonly, gives himself up to justice. In effect, the dominant notion has hastily ceased to exist; moral freedom has resumed its empire, and the so-called criminal has ceased to be mad.

"If investigation is extended to the mental state of the paternal or maternal ancestors of the accused, it is common to find that one or more members of the family have committed suicide, or have had a more or less prolonged attack of insanity.

. . . . . .

"Lastly (and this is a criterion of great value), if we investigate the offence from two different points of view, the hypothesis of a criminal act, and the hypothesis of an act of folly, in order that either view should be established, it is necessary that it should expose all the facts without effort, while the opposite view should present a series of improbabilities which at once strike the judg-

ment and are inconsistent with experience. The last method leads the physician with the greatest certainty to a right apprehension of the facts; by it doubt is dissipated, conviction arrived at, and the conscience relieved."[1]

Mania transitoria was set up as a defence in Guiteau's case, which has already been fully discussed, and it was there held that a defence of this kind cannot be accepted without independent proof of insanity.[2]

[1] Extract from a paper read before the Imperial Academy of Medicine, Paris, and translated for Winslow's Journal of Psychological Medicine.

[2] From the Philadelphia Evening Telegraph of Dec. 31, 1881, the following is extracted:—

"The guests in the Astor House, New York, according to the reports published in the morning papers, yesterday were startled to see what was apparently an enormous woman walking about the parlors and hallways. She wore a handsome black silk dress, cut decolette, and terminating in a long train. Fine lace ruching around the throat concealed the neck. Around her head and neck in graceful folds was wound a white zephyr 'cloud.' This person did not disdain occasionally to reveal a pair of shapely feet incased in morocco slippers and pink stockings. There was only one thing about her which savored of mystery. No one knew where she came from nor when she arrived. During the evening she sailed into the dining-room and took a seat at one of the tables. Detective Kerwin of the Church Street Station happened to be in the dining-room at the time, and he regarded the individual with curiosity. The head-waiter, James T. Smith, told the detective that she was an object of mystery, and he kept watch on the person. About 11.30 o'clock last night, the supposed woman accidentally disarranged her cloud, disclosing iron-gray whiskers. The detective then arrested the curiosity. Giving a fair imitation of a feminine shriek, the masquerader attempted to run. The detective quickly drew away the zephyr cloud, and the prisoner subsided. He begged to be allowed to change his clothes for his own apparel, and the officer accompanied him to his room. While changing his clothes he gave his reasons for wearing female apparel. He said that he lately lost his wife, and the only way he could feel that she was near him was by putting on his wife's clothing. He arrived at the Astor House yesterday morning, and registered as A. A., of Philadelphia. He said he was a merchant in this city. The clerk assigned him to room No. 135, and saw no more of him. He is five feet nine inches in height. The police had never seen him before."

It was further stated that "Mr. A. left Philadelphia yesterday morning for the purpose of visiting his sister-in-law who resides in N. C., Conn. Something over a year ago Mr. A. lost his wife, and since that time has suffered from melancholia, although never to such a degree as to incapacitate him from business. This morning Mr. S., his partner, received a letter from him concerning business matters, which he says bore no evidence of anything being wrong with him. The announcement, however, in the morning papers sufficiently aroused the fears of Mr. S. to induce him to telegraph to New York for more

§ 712. *Mania transitoria* (*furor transitorius*) was advanced as a defence in the trial of Andrews, before the supreme court of Massachusetts, in December, 1868.[1] The deceased, Holmes, was found dead in a wood, a short distance from Andrews's house, and from a street in the village of Kingston; his head mangled and his skull crushed. A considerable sum of money was found in his pocket. Suspicions were attracted to Andrews, who had been an intimate friend of the deceased, and who had in his possession a will of the deceased leaving him a considerable sum of money. Andrews denied all knowledge of the homicide; but, when it was shown that he had previously written to Holmes inviting him to come over about the time in question, that he was the last person in Holmes's company, that his accounts of his conduct were contradictory and prevaricating, that his own clothes, worn by him at the time of the homicide, had been cast by him, in a bloody state, in a neighboring well—then he confessed his guilt. This confession, in the shape that it took when he was examined on his trial, was, that Holmes whom he had met at the wood by the appointment just mentioned, had attempted to commit on him an unnatural crime, and that he had killed Holmes, partly in self-defence, and partly in an ungovernable transport of fury.

Andrews' case.

§ 713. Dr. Edward Jarvis, a physician of Dorchester, Massachusetts, called for the defence, opened his testimony by stating, that "it is thirty-three years since I commenced attending to mental diseases more particularly;" and that "since 1835, I have

specific information concerning the man who had been arrested. It is conjectured that Mr. A. may have taken a portion of the former wardrobe belonging to his deceased wife with him for the purpose of transferring the same to his sister-in-law; that he was led to look at the articles, and while brooding over his loss, received a sudden and uncontrollable impulse to act as he did. Mr. A. is a gentleman about fifty years of age, and enjoys a most enviable reputation among those who know him best, and who will deplore the sad misfortune that has befallen him. The following Associated Press despatch from New York, received this afternoon, gives the conclusion to Mr. E.'s strange adventure: 'The man who registered at the Astor House as A. A., a merchant of Philadelphia, and who was arrested yesterday for acting there in a disorderly manner, by parading the corridors dressed in woman's attire, was taken to the Tombs Police Court to-day.'" The defence of insanity was sustained on independent proof of mental disturbance.

[1] See *supra*, § 162, and also, for similar cases, § 166, and Hoppin's case, 34 Am. Journ. Ins. 462.

had private patients under my charge, but am now mostly employed as consulting physician." He strongly maintained the existence of *furor transitorius*, or sudden mania, as an independent form of insanity. His views, as subsequently expanded in an article in the Medical Journal,[1] as given in Mr. Davis's report of the trial, are as follows:—

"This is not exclusively a new or an old doctrine, but it has been taught in France and Germany for many years, by the managers of the insane, and by writers on these topics. It is recognized by psychological authorities in Great Britain. It is admitted and established by jurists and courts in Europe, in their management of persons who have committed acts which would otherwise have been considered as crimes, and for which they would have otherwise been doomed to death on the scaffold.

"The case of Andrews, who was tried at Plymouth in December last, for homicide, has brought this subject prominently before the public here. As there is a difference of opinion in regard to this doctrine, especially in its application to the case of Andrews, it may be well to present the views of those who have written upon it, in connection with an account of Andrews's agency in the homicide, and of his trial.

"Dr. Henry Maudsley, manager of a lunatic asylum at Hanwell, near London, and one of the editors of the Journal of Mental Science, says, 'Cases of insanity are occasionally observed in which an attack of mania suddenly comes on, and soon passes away, so that although there is no epileptic fit, one can scarce avoid looking upon the attack as a sort of epilepsy. Now this mania transitoria may take on the homicidal form.'[1]

"1. He quotes from the Journal de Méd. et Chir. Pratiq., 1833, the case of a shoemaker, who was of industrious, sober habits. He arose early one morning to go to work. In a short time his wife was struck with his wild look and incoherent talk. He suddenly (*tout à coup*) seized a knife and rushed upon his wife to kill her. She had hardly time to escape with her child. Dr. Lowenthal was called. He bled and gave other remedies to the maniac. In the afternoon he was quiet. In the evening he regained the use

[1] See also 26 Am. Journ. Ins. 369.

[1] Journ. Ment. Science, ix. 335. See also *id.*, xviii. 122, 212.

of his faculties, but he had no recollection afterwards of the events of that morning.

"Castelnau calls this *la folie instantanée, temporaire, passagère*, 'mania instantaneous, transitory, temporary, fleeting, a mental disorder, which breaks out suddenly, like the sudden loss of sense in some physical disease, and the subject is urged in a moment to automatic acts, which could not have been foreseen.'[1]

"'The first act of the mania may be homicide, and the disease may pursue its course under the continued or intermittent form, but, when the act of violence or homicide is the only maniacal manifestation, it is instantaneous, temporary, fleeting, transitory insanity, according to Henke, Marc, Cazauvielh, etc.'

"2. He quotes in illustration from Hiem of Berlin the case of a counsellor of state who had ever enjoyed good health. He suddenly awoke one night, breathing stertorously. His wife endeavored to aid him. He assailed her with the most violent fury, and tried to throw her out of the window. After a struggle for half an hour, he was exhausted. An emetic put an end to the paroxysm, and for fourteen years he had had no other attack.[2]

"3. A laboring man of Garde, returning from his work, met his wife, and asked her if supper was ready. She immediately seized a knife, and struck him a fatal blow. She had not been insane, *though excitable*, and *belonged to an insane family*.[3]

"Castelnau, referring to this form of mental disorder, says, 'I could show by facts, already so numerous, recorded in the works of physicians devoted to the study of insanity and the observation of the insane, the existence of a mental malady which society has the greatest interest to know, in order to prevent consequences dangerous to the community and to the person affected.'[4]

"Again Castelnau says, 'We could cite a great number of facts, but these are sufficient to show that the various kinds of insanity, as of all the diseases of the organism, can establish themselves in a manner either progressive or sudden, and have a progress slow or rapid, continued, intermittent, or temporary.'[5]

[1] Dr. Ph. Boileau de Castelnau in Annales d'Hygiène Publique et de Médecine Légale, xiv. 217.

[2] Castelnau, Ann. Hyg. et Méd. Lég., xlv.

[3] Ibid., 993.

[4] Ibid., 216.

[5] Ibid., 438.

"After a great variety of facts and arguments, Castelnau, at the end of his essay, says in conclusion: 'There exist these instantaneous changes in the mental faculties, that is, instantaneous insanity.

"'These changes have their first and only manifestation in a single act of qualified crime.'[1]

"Castlenau's essay was published in 1851; seven years later, December 14, 1858, M. le Dr. A. Devergie read, before the Imperial Academy of France, an essay on the questions, '*Where does reason end? Where does insanity begin?*' This was printed in the Annales d'Hygiène Publique et de Médecine Légale, in 1859, vol. xi., second series. He confirms the opinions of Castelnau, in regard to instantaneous and transient insanity, except that he qualifies them with the certainty or probability that all or nearly all these cases had been preceded by hereditary taint or some mental disease or irregularity in greater or less degree.

"'Besides those cases of insanity produced under all these causes, is another mode of alienation, to which they gave the name of *Transitory Insanity* (*folie transitoire*), that is to say, without preceding apparent symptoms, without cause, near or remote, appreciable to the world, bursting out as suddenly (*brusquement*) as a clap of thunder, and ceasing completely with a criminal act.'[2]

"'No motive for the act, either in ungoverned passions, or in acquired ideas; previous character and manner without reproach; absence of hallucinations; the explosion of the mania manifesting itself in one act of violence or crime, and the immediate return of reason after this act is accomplished; these, in my opinion, are the characters of *transitory insanity*.'[3]

"Devergie qualifies this description as above indicated: 'Nevertheless the word *transitory*, perfectly just for the world, in the sense that the mania was fleeting (*passagère*), although the act was of the most criminal nature, does not seem sufficiently exact for the physician. The persons of this description should not be considered as sound in mind when the idea of crime suddenly rises within them, and becomes the ruling thought, irresistible, stronger than them-

[1] Ann. Hyg. et Méd. Lég. xi. 2d ser. 998.

[2] Ibid., 407.

[3] Ibid., 408.

selves, stronger than their own will. The antecedents of their families, hereditary taint, divers acts of social life, propensities and tastes perverted, tendencies to silence and abstraction, thoughts of suicide, for years existing in many, have been the forerunners of the sudden outburst of irresistible criminal mania.'[1]

"4. Devergie quotes the case of a young man of nineteen, son of a merchant of Bordeaux. He had been most regular and exemplary in all his previous life, an affectionate brother, dutiful son, faithful to his employer, a banker, and the heir of an immense fortune, but he was the child of insane parentage, and had a mother-in-law for whom he had a deep aversion. There was a dinner party at his father's house, which passed without unusual incident. 'At the time of the dessert, Julius, the youth, left the table, and went to the hall to warm himself; the fire was not burning; he then went to his chamber, took his gun and straw hat to walk in the fields as he was accustomed to do. Then the thought of suicide, which had troubled him for a month, suddenly presented itself, and as suddenly changed to the thought of killing his mother-in-law. He threw down the gun, went to his brother's chamber, took two pistols, which had been loaded three months, leaving his own pistols that he had loaded the evening before. He went to the dining-room, where his mother-in-law was sitting at the table with his father, and discharged one of the pistols into her temple.'[2] He was rational immediately afterward, and, so far as is known, remained sane.

"Upon this case Devergie remarks: 'If the act which young Julius committed was one of mania, it was in him a passage sudden and rapid from reason to insanity, and a return as sudden from insanity to reason. This then is a very exact example of that species of mania which is called *transitory*.' This case was submitted to MM. Gintrac and Delafosse of Bordeaux, Calmiel, Tardieu, and Devergie, who gave their opinion, 'that Julius, at the moment of this action, had not the possession of his freedom of will,' and the court and jury acquitted him fully of the charge of crime.[3]

"These doctrines are sustained by French lawyers, and put in practice by French courts and juries, in the trials of cases of this

[1] Ann. Hyg. et Méd. Lég. xi. 2d ser. 408.

[2] Ibid., 398.

[3] Ibid., 499.

nature. 'Billard, a jurist (*jurisconsulte*) of high character, whom no one suspects of being indulgent, recognizes the reality of instantaneous insanity.' He says: 'There are some madmen whom nature condemns to eternal loss of reason, and others who only lose it for a moment (*instantanément*) by the effect of some great grief, surprise, or other cause of this kind. There is no other difference between these two forms of mania than that of duration, and one whose head is turned for some hours or for some days is as completely insane, during this ephemeral action, as the one who is mad for many years.' *Les aliénés devant les cours d'Assizes.*[1]

"To this Devergie adds: 'So in the short period of thirty years or more, we have passed from incredulity, I may say, from ignorance the most profound of the nice distinctions of insanity, with such immense advance, that now our judges and juries accept as founded on evidence not only delusions on a single point, monomania, but even those transitory aberrations of reason which, in the judgment of the world, transform a man of previously honorable character into a criminal, and one so much the more wicked because he has covered his perversion of heart so completely as to conceal, through a long period of years, the baseness of his act under the garb of the most irreproachable life.'[2]

"Esquirol says: 'These deplorable homicidal impulses are spontaneous and fleeting, and without habitual delusion.'[3] Referring to murder by one in this condition, he says: 'This presupposes the suppression of all intelligence, all sensibility, and all volition. The following fact will best explain my meaning.

"5. 'A man thirty-two years old, tall, thin in flesh, of a nervous temperament, amiable disposition, was educated with great care, and accomplished in the fine arts. He had had a cerebral affection from which he had recovered many months previous to his arrival in Paris, two months ago. There he conducted himself with great propriety, until one day, when he entered the palace of justice, and there threw himself upon a lawyer and seized him by the throat. He was arrested and taken to prison, and put under my care on the

[1] Castelnau in Ann. Hyg. et Méd. Lég. xlv. 217.

[2] Ann. Hyg. et Méd. Lég. xi. 2d ser. 402.

[3] Malad. Mentales, sous les Rapports Médico-Légal, ii. 104.

same day. At my first visit, on the next day, he was calm, without anger or resentment, and had slept all night, and had sketched a landscape. He spoke of his going to the court-room the evening previous, coolly, but had no recollection of his conduct there or of his motives. Nor did he manifest any regret. He answered my questions courteously, and with an air of sincerity. "I went to the palace of justice, as I would to any other place without any special purpose, merely as a sight-seer. I not only had no ill will against the advocate, but did not even know him. I cannot understand how I could have committed such an outrage." When I said, that it could be explained only by the sudden attack of some disease, he said, "You may explain it as you please; I am not conscious of having been ill, and I cannot tell how this could have happened." During the three months that he remained under my observation, he manifested not for an instant any disorder of the mind.'[1]

"Castelnau says: 'there is no want of authorities to establish the doctrine of instantaneous insanity.' The observations made by writers on medical jurisprudence (*medicins legists*) of the present day leave no doubt of the existence of this mania of a few instants, during which men who have never manifested insanity all at once (*tout à coup*) are completely deprived of their reason and give themselves up to the most deplorable excesses. The learned chief editor of the Journal du Médecine et de Chirurgie Pratique offers five examples of this kind of mania. In four of these, accidental circumstances only prevented persons, whose previous life had been irreproachable, from committing crimes. The fifth case was that of a woman who killed her mother and three others, and wounded a fourth person."[2]

§ 714. With this may be classed the argument of Dr. Hammond, in his review of McFarland's case:—[3]

"I have stated incidentally, that there is a form of insanity which, in its culminating act, is extremely temporary in its character, and which, in all its manifestations, from beginning to end, is of short duration: 1st. This species of mental aberration is well known to all physicians and medical jurists who have studied the

[1] Malad. Mentales sous les Rapports Médical et Médico Légal, ii. 102.

[2] Ann. Hyg. et Méd. Lég. xlv. 221.

[3] Journ. Psy. Med. 459.

subject of insanity. (*a*) By authors it has been variously designated as transitory mania, ephemeral mania, temporary insanity, and morbid impulse. (*b*) It may be exhibited in the perceptional, intellectual, emotional, or volitional form, or as general mania.

"2d. The exciting causes of temporary insanity are numerous. (*a*) It may be induced by bad hygienic influences, such as improper food, exposure to intense heat, cold, or dampness, or to a noxious atmosphere; by excessive physical exercise, by disease of the heart, by blows upon the head or other parts of the body, by certain general and local diseases, by the abuse of alcoholic liquors, by the ingestion of certain drugs, such as opium, belladonna, and hashish, by excessive intellectual occupation, by loss of sleep, and, above all, by great emotional disturbances. (*b*) Among these latter are religious excitement, grief, disappointed affection, and especially anxiety, by which the mind is kept continually on the stretch, tortured by apprehensions, doubts, and uncertainties, and by which it is worn away more surely than by the most terrible realities.

"3d. The predisposing causes are to be found in the individual, as an inherent part of his organization. (*a*) They consist in an hereditary tendency to insanity, or to some other profound affection of the nervous system; (*b*) or the possession of an excitable, nervous temperament, which is incapable of resisting those morbid influences which persons of phlegmatic disposition would easily withstand. (*c*) Thus, all men are not affected alike by disturbing causes, because all men are not cast in the same physical or mental mould; a circumstance which will produce insanity in one person will scarcely ruffle the equanimity of another.

"4th. The immediate cause of temporary insanity is the disease itself, of which the mental aberration is simply the manifestation. It may consist of—(*a*) A condition of cerebral exhaustion in which, owing to excessive wear and tear of the brain, new substance is not formed with sufficient rapidity to take the place of that used; (*b*) The circulation through the brain of blood which is not normal in quality; (*c*) Cerebral congestion."

§ 715. A qualified assent to the same hypothesis may be found in a late (1871) publication of Dr. Krafft-Ebing. (*Die Lehre von der mania transitoria.*) This experienced and acute observer records 18 cases which he declares exhibit the symptoms of this disease. Of these, 15 were men and 3 women. The attack in 14

out of 18 of these cases was sudden, without the premonitory signs of ordinary mania. In most of the reported cases, terror was strongly marked. The patient suddenly was overcome with anguish; with fear of approaching death; with belief that he was assailed by a vindictive and desperate enemy. In some instances the "mania" took the form of violent rage. But it is an essential requisite of *mania transitoria*, according to Dr. Krafft-Ebing, that the patient's power of memory should be lost during the prevalency of the attack. He is unconscious afterwards of anything that he did while the attack continued. This, it is maintained, is an infallible test, and one which is readily applied. Dr. Krafft-Ebing on this point, however, advances positions which open his whole exposition to unfavorable criticism. He declares that a simulant, who feigns this disease, will not know where his oblivion is to commence, and where it is to end. But a simulant who is intelligent enough to select this peculiar type of disease as that which he is to feign would be intelligent enough to follow Dr. Krafft-Ebing's prescription how to do so successfully. And the prescription is simple enough: "Forget everything that you did when you lapsed into this transitory rage—remember everything else." Dr. Krafft-Ebing declares that the simulant would betray himself by his consciousness. But an intelligent simulant would do no such thing; whereas, an innocent person, hurried unconsciously into crime by such a mania, would, on being subsequently informed of it, be overcome, when the subject was afterwards referred to, with emotions which it would be difficult to distinguish from remorse.[1]

§ 716. On the other hand, Dr. Choate, superintendent of the Taunton Lunatic Asylum, who has held that "position for the last fifteen years," and has had "about three thousand six hundred patients" under his charge, in addition to extensive collateral observation, testified in Andrews's case that "there are no cases of instantaneous insanity, instantaneously maniacal," declared that he had never known such a case, and testified that "the fact that a man was under constant observation and appeared sane down to an hour at least before the homicide, and then half an hour afterwards,

[1] Observations somewhat similar to those of Dr. Krafft-Ebing are recorded in the Edinburgh Journal for November, 1865.

is to my mind conclusive that the homicidal act was not in consequence of disease, and did not spring from insanity." To the same effect is the testimony of Dr. Bell, on the trial of Rogers,[1] who stated that he had had a thousand patients under his care.

§ 717. With regard to the argument of Dr. Jarvis, which has been given above, the following observations are to be made:—

Dangers attending recognition of this mania.

§ 718. *First.* However it may have been at the time Dr. Jarvis wrote, it cannot now be affirmed that *furor transitorius*, or *mania transitoria*, as a distinctive disease, is recognized generally by the German and French writers on psychological medicine. Friedreich[2] and Schürmayer, as will presently be seen,[3] positively decline to award it such a status. Dr. Liman, who may be regarded of high authority, not merely as the editor of Casper, but as a high government officer charged with the judicial examination of questions of insanity, says, with much emphasis, that there may undoubtedly be transient attacks of insanity, but "there is no distinctive species of mania of this class, no so-called *mania transitoria*." "This unscientific and perilous designation," he continues, "cannot be applied to practice; and is entirely superfluous in the elucidation of each individual case by the general diagnostic tests." And Dr. Bucknill[4] says that "the existence of this class admits of grave doubt," and adds, very justly, that "it is probable that the cases of insanity which have been placed under this head were less recent and sudden than they were supposed to be. *The earlier stage of diseased feeling had been unobserved by others, and unacknowledged by the patient.*"

§ 719. *Secondly.* The alleged cases are either imperfectly reported, or exhibit proofs of permanent mental lesion. Of imperfect reporting may be mentioned No. 1 in Dr. Jarvis's statement as given above. To prove a negative we must set out by showing that there has been a due application of the requisite tests. But as to the history of the patient whose case is here noticed, we have no information, and no evidence given that any attempt was made to search for it. Whether he had had prior attacks—whether there

[1] Pamp. p. 149.
[2] Handbuch, etc., p. 591
[3] *Infra*, § 722.
[4] Essay on Criminal Lunacy, p. 38.

was insanity in his family—whether he was epileptic—we are not informed.

Case No. 2, that of Stadsrath Lemke, was reported as far back as 1817, and has since been repeatedly canvassed. It was clearly a case of sleep-drunkenness,[1] to which it appeared that Lemke was subject, and during which, at a prior period, he had made a homicidal attack on his secretary. In the case cited above, it appears he had been previously on a hunting party, and his sleep was probably deepened by his exposure, if not by conviviality. No doubt he was startled by some noise, and thereupon attacked his wife in words that showed that he thought her a thief. It was under a similar delusion, when suddenly startled in his sleep, that he had previously attacked his secretary. The case was not *mania transitoria*. It was simply the momentary terror and violence of sleep-drunkenness; a state capable of easy ascertainment, and of positive judicial recognition.

Case No. 3 is that of a person who is spoken of as "excitable," and as belonging "to an insane family." Nothing is said which excludes the supposition of subsequent insanity, of which the outburst referred to was the first open sign; and there is no statement as to the symptoms of "excitability" which in this woman of insane family preceded this outburst. But, unless these symptoms indicated insanity, and unless subsequent insanity occurred, it is hard to make out of the facts above stated a case on which a court of law could rest a verdict of irresponsibility. The "excitable" wife of a laboring man, when he asks her, it may be in some way to irritate her, if supper is ready, strikes at him with a knife, and the blow proves fatal. Such cases are frequent in criminal courts; but in no case would an acquittal on ground of insanity ensue, unless insanity was proved *aliunde*. If *mania transitoria* is supposed to be sufficiently shown by such a violent act, taken by itself, then there is no violence yielded to sudden rage that is not *mania transitoria*. The case, therefore, rests as follows: If there was no proof of insanity *aliunde*, then there was no *mania*—nothing but a burst of ill-temper and irritation, common to all acts of sudden violence. If there was proof of insanity *aliunde*, then the case was not mania *transitoria*, for the very idea of the transitory and

[1] See *supra*, § 484.

parenthetical character of this mania excludes the idea of its being the manifestation of a continuous state.

The same observation applies to No. 4, though in this case the question is embarrassed by the fact that the defendant is admitted to have had a "deep aversion" to the mother-in-law whom he killed.

No. 5 would exhibit the same features as "homicide from general malice," well known in the law books, were it not that the defendant is stated to have had a prior "cerebral affection," and subsequent to the deed to have lost all recollection of the event. Here then, again, *mania transitoria* can only be sustained by evidence of cerebral disease before and after the act. If, however, there be such prior and subsequent cerebral disease, the case is not *mania transitoria*.

§ 720. *Thirdly.* To admit that such an hypothesis of irresponsibility is applicable to acts of sudden abnormal violence, without proof of insanity before or after the act, is to emancipate violence and barbarism from penal restraint. The more atrocious the act—the more complete the proof of the defendant's prior and subsequent sanity—the more distinctively is the defence of *mania transitoria* made out.

§ 721. *Fourthly.* The principle of the law, that a person sane before and after a particular act, is to be presumed to be sane during such act, is a principle of common sense.[1] Without it, none of the business and social intercourse of life could be sustained.

§ 722. Not differing widely from these results are the views of Friedreich[2] and Schürmayer.[3] The latter defines this phase of mania to involve an attack of frenzy, fury, and raving madness, accompanied with more or less confusion of the senses, and of the thinking faculties, and peripheric consciousness which arises without any perceptible or from a very slight external provocation, generally lasts but a short time, hardly a few hours, and, after sometimes leading to the most serious consequences, leaves but an indistinct trace in the memory. It is either the opening symptom of a disturbance of the super-physical faculties which has hitherto remained

[1] See *supra*, § 246.

[2] Friedreich, Handbuch der gerichtlichen Psychologie, p. 591.

[3] Gericht. Med. § 522.

occult, and now first manifests itself, or it appears in persons hitherto entirely sane, or in individuals who have already suffered from pronounced insanity, particularly from melancholy, depressed delirium, lunacy, and imbecility. In the latter class of cases, the question of responsibility presents no difficulties ; far more in the former, in view of the possibility that the guilty act may have been the result of the outbreak of violent passion. It will then be often impossible to do more than to set forth the possibility or probability of a *furor transitorius*, which is effected by establishing the existence of facts which may have caused it. Such are epilepsy, irregular development, gastric irritations, disturbances of the menstrual or hæmorrhoidal courses, or the secretion of milk, the sudden dispersion of eruptions of the skin, sunstroke, drunkenness, poison, violent agitation, anger, dread, fright, deep shame, over-exertion of the mind. But where no such probable causes are to be discovered, the examination is necessarily confined to the statements of the party, and the immediate investigation of his intellectual and moral condition, the principal point of attention being the search and scrutiny of the motives of the acts, and the inquiry whether or not they were mingled with hallucinations or illusions, and whether the act was not preceded immediately, or for some length of time, by bodily disturbances, sleeplessness, restlessness, moodiness, etc. Very great difficulties are involved in those cases in which an additional doubt arises whether the ravings were not occasioned by the criminal act itself, the probability of which, with a certain class of temperaments, has been already noticed.

The non-recognition by the courts of this form of defence has been already stated.[1]

[1] *Supra*, §§ 162, 166.

CHAPTER VIII.

DELUSIONS AND HALLUCINATIONS.

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Marked by general derangement of the perceptive faculties.

§ 723. Under this head will be treated that species of mental unsoundness which is marked by the continued and controlling existence of insane ideas, without being either accompanied with delirium or with moral maniacal propensities to specific crimes. It may be considered as covering the same phase as the partial lunacy (partielle Verrücktheit) of Schürmayer, who declares it to consist in crazy notions, with only a secondary participation of the affective faculties, without damage to the peripheric consciousness, and without a decided weakness of the intellectual powers. The subjects of it have resolved their individuality into their delusion, it is in their eyes an absolute truth, and all demonstration and argument in opposition to it are idle. Persons of this kind often suffer no external mark to betray their inward disorder, frequently speak and act quite rationally about and in matters outside of the circle of their hallucinations, and only suffer the point of derangement to transpire when it is adverted to in conversation or when they have

occasion to write. The malady may easily lead to the gravest violations of law, for which reason it is of the greatest judicial interest. Where the act is clearly the result of this morbid condition of the mind, no legal responsibility can attach to it.[1]

This species of mental unsoundness appears less frequently as a primary disease, than as a *secondary* result, developed out of prior disease, in the form of melancholy or otherwise. When the general expansive and depressive affection of the sentiments recedes, the confusion of the peripheric consciousness is dispelled, the bodily health regains its equilibrium, the patient finds himself endowed with a system of affections and perceptions to which he was before a stranger, but which revolve round one or more manifestly insane stand-points.

§ 724. These various fancies are reducible to certain groups, which take their point of departure (1) in the relations of the individual to the external world, to the supernatural, and to his own personality, or (2) in perceptive anomalies of depression and mania.

Various phases of delusions.

The *former* view admits the following classification: *crackbrainedness*,[2] where the erroneous notions relate to the objects and relations of the external world, and of the body of the individual; *frenzy*, where they concern things beyond the reach of the senses, religious mysteries and divine inspirations; *folly* (*Narrheit*), where the identity of the person has undergone a change. In the *latter* view, the subject-matter of the delusion generally depends upon the kind of erroneous notion which accompanied the preceding stages of depression and mania. The delusion itself is of a *depressing* or *elevating* description. The depressive form subdivides as follows:—

a. Hypochrondriacal delusions, where anomalous bodily sensations—delusions of the sense of touch—suggest the idea, that particular parts of the body have been transformed, that there are parasitic animals in them, or injurious substances, which must be removed, etc.

b. Demoniacal delusions. The patients declare and maintain, with perfect self-possession and entire calmness, that demoniac

[1] Schürmayer, Gericht. Med. § 556; *supra*, §§ 125–145.

[2] "A little cracked," to use Dr. Rush's popular synonyme, for what he at the same time tells us is expressed by the Scotch by the phrase "having a bee in his bonnet."

beings or other persons, living or dead, have their seat in their bodies.[1]

c. Such delusions,[2] called by Ellinger "concentric," as consist in the delusion that the personal reputation of the sufferer has been injured by a real or imaginary misfortune, that the infamy incurred has reached the ears of the highest circles—impressions still further confirmed by delusions of the sense of hearing—and that no resource is left but either seclusion from all intercourse with mankind, or restitution of good fame by some bold exploit.

d. Peripheric delusions, in which the patients regard themselves as the objects of a plot on the part of the authorities or of their relatives, or of some secret society, surrounded by spies and functionaries of the secret police, watched and dogged at every step, injured bodily and mentally in action and repose; persecuted and endangered in life and property, or that they are beleaguered by thieves, robbers, and murderers, or that spirits hover in the air to torment and disquiet them, etc.

§ 725. The elevating or ecstatic phase of this species of mental unsoundness subdivides itself, according to Schürmayer:[3]—

a. Religious delusions, which may be considered in connection with dæmonio-mania, already noticed,[4] in which the patient pretends to stand in a particular position, as regards degree and distinction, in the eye of God, to have been appointed censor, prophet, reformer, and Messiah, etc.; these are generally accompanied with hallucinations of sight and sound, and often lead to the most dreadful crimes.

b. Delusions of pride. The patients suppose themselves called, by their qualifications of person and mind, to the most important missions.

c. Delusions of vanity. The delusion here is a supposed descent from a princely lineage, elevation to a higher social position, etc., the enjoyment of which, however, is destroyed by the machinations of the envious and malevolent.

d. Sexual delusion, which is sometimes of a more intellectual, sometimes of a more carnal nature, is a state of mind in which the patients suppose that, in consequence of their personal charms or

[1] See *ante*, §§ 644–650.
[2] Ellinger, p. 132.
[3] Med. Journ. § 556.
[4] *Supra*, §§ 644–677.

other advantages, either all people of the opposite sex, or even persons occupying a higher rank, such as princes, are in love with or betrothed to them in spirit. This is attended with many hallucinations, particularly of the sexual kind.[1]

§ 726. It is not to be denied that the proper consideration of this species of mental unsoundness presents great difficulties, and the practical suggestions of Ellinger[2] are indeed worthy of peculiar attention. He notices the following phases:— Tests of Ellinger.

"1. An impression of having sustained wrongs at the hands of certain persons, against whom revenge is meditated and executed. Here the diseased individual often acts on mature reflection, and in the full knowledge that he has no right to take revenge, and of the consequences which ordinarily ensue; and then it may occur either that he prefers undergoing the extremity of the law, and perishing together with the supposed wrongdoer, to remaining longer exposed to his assaults, or that he proceeds on the ground of his known and established insanity, calculating to escape responsibility and punishment on the strength of the indulgence accorded to his case. Here there appears in general ground to assume a moral responsibility.[3]

"2. An impression that the patient is acting at the instigation or under the constraint of demons. In this case it might become necessary to inquire whether, and in how far, the patient understood that the demands of the demons were wrongful, and that he was at liberty to withstand them, and whether, and in how far, it was actually in his power to withstand them.

"3. The patient imagines himself beset by thieves, etc., and neither sure of his property nor of his life. This may perhaps be treated as a case of self-defence, and all responsibility excluded.[4]

"4. The self-consciousness of the patient is perverted, and he acts with that plenitude of power with which he is invested in view of his position and his destiny, in religion, politics, etc. In this case, as under the third position, responsibility is out of the question.

"But as a fixed idea never occurs in such isolation as is erro-

[1] *Supra*, § 617.
[2] P. 137.
[3] See *supra*, §§ 125–145.
[4] *Supra*, §§ 125–145, 442.

neously supposed, there being always a series of phantoms connected in a system, the outlines of which it may be perhaps impossible to define with accuracy; and as the entire affective life has become altered and irregular, the general views of men and things have become distorted, and illusions of the senses often brought to light by a rigid scrutiny, which entirely escaped the eye of the superficial observer—as the action, reaction, and intro-action of the psychical faculties is no longer measurable by the ordinary standard—*opinions must be given with the greatest circumspection, and every possible reservation, whenever the connection or want of connection between the illusion and the deed is not perfectly evident.*"

Errors of insanity distinguishable from those of sanity.

§ 727. It is not easy to mistake the *error of a lunatic* for the *error of a sane man.* The decisive point of difference between them is, that in the latter case the action of the thinking faculties, from whatever cause this be, terminates too soon, and before the entire subject has been thoroughly sifted, and that such an error, after having been properly refuted, can only be maintained by dint of obstinacy or indolence. In insanity, on the contrary, the error of the understanding is occasioned by the abnormal function of the perceptive faculty. One or two prevailing schemes of perception[1] are applied to almost all other perceptions to which they can be adjusted in any way, and thus one and the same *tout ensemble* of perceptions is continually reproducing itself on the slightest provocation. Hence the chain of association loses, in the eye of the individual, its accidental, personal, and contingent character, and by its constant recurrence, deludes the understanding with the idea that the same connection subsists between the objects in reality as in the imagination of the individual, until at last reason herself is misled into seeing a necessary relation of cause and effect in the perceptions with which it finds itself invariably associated. The individual is therefore compelled to think accordingly; and even if he is sometimes brought by instruction to acknowledge his error, it is only to relapse into it, not so much from obstinacy as because of this compulsory synthesis of the perceptive faculties. *A sane man in error retains the power of doubting, not the madman.* This condition of

[1] Compare Hagen, vol. ii. p. 707.

the perceptive faculties is also the cause of the great indifference manifested towards surrounding things, of the dreamy manner and the illusions growing out of it. It is also a matter of course that the perceptions, by their constant recurrence, cease to be mere perceptions, but ultimately take rank as thoughts and ideas, in consequence of their constant action upon the understanding, and their assumption of the form of propositions.[1]

§ 728. A distinction is very properly drawn by Schürmayer, following in this respect the general current of modern opinion, between illusions and hallucinations, the former comprising mistakes in the conception and interpretation of the perception of objects *actually present*, while in the latter the perception which originates in a diseased action of the senses appears to the patient as if the sensation were produced by a real external object acting upon the senses.[2]

Distinction between illusions and hallucinations.

The distinction is thus stated by Dr. Taylor: "*Hallucinations* are those sensations which are supposed by the patient to be produced by external impressions, although no material objects may act upon the senses at the time.[3] *Illusions* are the sensations produced by the false perceptions of objects."[4] "When a hallucination," he proceeds to say, "or an illusion is believed to have a real and positive existence, and this belief is not removed either by reflection or an appeal to the senses, the individual is said to labor under a *delusion;* but when the false sensation is immediately detected and is not acted upon as if it were real, then the person is sane."

§ 729. "As a morbid condition of the brain," says Sir Benjamin Brodie, "may produce the impression of visible objects, or of voices, which have no real existence, so it may also produce notions of a more complex and abstract character, and these may be constantly obtruded on the mind, so that the individual is unable to withdraw his attention from them, being, as it would seem, as much beyond the influence of volition as the muscles of a paralytic limb. Thus, one person believes himself to be ruined as to his

[1] Ellinger, p. 818.

[2] Schürmayer, Gericht. Med. §§ 554.

[3] See, on this subject, remarks by Dr. Sigmond, Jour. of Psychol. Med., p. 585, 1848.

[4] Taylor's Medical Jurisprudence, p. 552. See a remarkable case, combining the characteristics of delusions and illusions, 21 Journ. Ment. Sci. 226.

worldly affairs, and that he and his family, though really in affluence, are reduced to extreme poverty; while another is persuaded that he is in possession of unbounded wealth, the consequence being that he is in danger of being ruined by extravagance; and a third is under the apprehension of his being accused of some dreadful crime, and perhaps seeks refuge from his fears in self-destruction. It is more difficult to escape from the latter than from the former class of illusions, as the appeal lies not from one sense to another, but to a more refined process of thought and reflection and the examination of evidence."[1]

Dr. Hammond's test of the distinction.

§ 730. A writer of much acuteness, Dr. Hammond, of New York, has, as has already been noticed,[2] distinguished illusions and hallucinations on the one side, from delusions on the other, by declaring that of the falsity of the first (illusions and hallucinations), the patient may or may not be conscious, but that of the falsity of the latter he is unconscious. The difficulty as to this distinction is that illusions and delusions are often used convertibly; and that, in addition, the distinction amounts to no more than saying that as to illusions and hallucinations the patient is open to reason, and is therefore sane; but that as to delusions he is not open to reason, and therefore is insane. But this is in conflict with the almost universal practice of medical psychologists, which is to speak of illusions and hallucinations as among the symptoms of insanity.

Delusions no defence in matters not their product.

§ 731. A question of much medico-legal importance has arisen in this connection as to whether insane illusions or hallucinations ("delusions" as they would be called if the nomenclature above mentioned be adopted) can coexist with general mental soundness. If the observations above mentioned be correct, the question is to be answered promptly in the negative. He who conceives a tree to be a man, or a friendly neighbor to be a robber, and who cannot be reasoned out of such conceptions, is insane. The *degree* of his insanity, however, and the extent to which it divests him of responsibility, is a question for distinct consideration. He may be insane, and yet, as to acts not the product of insanity, he may, as has been shown, be responsible.[3]

[1] Psychological Inquiries, etc., p. 79. London, 1854.

[2] See *supra*, § 312.

[3] *Supra*, §§ 34–60; 145.

§ 732. The difficulty here, so far as it does not rest on a confusion of terms, arises from the erroneous assumption that perception is an independent factor, capable of independent disease, somewhat in the same way that a mirror in a chamber may be broken, without the chamber being in any other way disturbed. But the perceptive powers are not a mere mirror. "All perception or knowledge," says Mr. Bain,[1] very accurately, "implies mind. To perceive is an act of *mind;* whatever we may suppose the thing to be, we cannot divorce it from the percipient mind." In sight, for instance, we have the action of light on the retina, accompanied by a series of nerve currents and other influences; but the "mental phenomenon is the feeling, or subject state accompanying these," and "the word (sight) is properly applicable, and should be confined in its application, to the strictly mental act." A child, for instance, sees the moon, and conceives it to be within its reach. Here the hallucination rests exclusively on defect of reason; in other words, there is no memory to recall the fact of failures to grasp the moon in particular or objects in general which present themselves to the eye as distant. The same illusion might occur in the fatuous imbecility of old age. Now where this illusion cannot be reasoned away—when it would be in vain for us to say, "try to seize the moon, and you will find it escapes your grasp," or "objects having the appearance of distance, as you will learn through memory and association, are proportionally removed from your reach"—if the person whom we address is incapable of thus reasoning, then he is mentally unsound. But it is absurd to speak of this unsoundness being confined to this particular illusion. It is a general mental unsoundness—*i. e.*, it springs from the weakness of the functions of memory and of association, which are among the prime factors of reason.[2] And yet, at the same time, the unsoundness may not reach so far as to require the sequestration of the party, and the declaration of his irresponsibility.[3]

§ 733. So, also, with regard to the sense of sound. A person of weak nervous system is wounded by a gunshot, and ever afterwards associates a noise like that of the report of a gun with severe per-

[1] Bain's Mental and Moral Science, p. 196. London, 1868.

[2] See *supra*, §§ 49–60. This argument may be supported by the high authority of Griesinger, Ment. Path. § 47.

[3] *Supra*, §§ 46–60, 145.

sonal pain. If you cannot reason this away by experiment or explanation, then the patient's mind is unsound. He is not, it is true, "insane" in the sense of being subject to a single insane illusion. His mind is unsound because his powers of memory and association are so perverted and disordered that he treats a single instance of association as a general law. The derangement arises from the debility of an organ essential to all complete mental judgments. On the same reasoning may be explained the cases of sleep-drunkenness which have been already noticed. A hunter in his sleep hears a noise like a shot; he springs up and shoots the supposed assailant. He is judged irresponsible, not because he is the victim of a particular insane illusion, but because, in the condition of trance-like dream in which he was at the time of the event, his reason was suspended, and his mind, as such, not only in this, but as to all other processes involving memory, association, and discrimination, was deranged.

§ 734. So, also, with the common monomaniac delusion of persecution. A man believes himself to be persecuted by all mankind; that he is the victim of a conspiracy to poison; that he is beset by evil spirits in the shape of men. There is, however, no distinctive, collateral, independent mania about this, capable of existing when the mind itself is sound. The mind, in such a case, is unsound. The unsoundness, it is true, may only exhibit itself in this particular method in the same way that an irritable temper discharges itself on some particular object. The cause, in the first case, is in the mental derangement which, when one illusion is dispelled, seizes on another, just as the irritable temper pounces on object after object on which it may successively vent itself while the ill-humor lasts.

Here, then, arises the interesting question, when do the powers of memory,[1] of association, of discrimination, become so enfeebled or perverted as to constitute incompetency and irresponsibility?

§ 735. Psychologists have failed in supplying any such uniform test. The question must be determined concretely as to each case by the history, conduct, examination of the patient himself. It may, however, be generally said that when a delusion is transient; when it is capable of being repressed; when the patient takes steps which show that he

Question determined on circumstances of each case.

[1] See 23 Journ. Ment. Sci. 609.

is conscious of its unreality; when it can be dispelled by the force of countervailing considerations; then mental unsoundness is not to be assumed. It is otherwise when the delusion, however it may be concealed, is, on the one side, in itself palpably absurd, and yet, on the other side, it is cherished by the patient as a radical belief.[1]

§ 736. If such be the case, then, as to acts which are the products of such delusion, the patient is to be regarded as incompetent and irresponsible.[2] And as to acts not the result of such delusions, his mind may be regarded as so enfeebled or confused as to subject him only to a diminished criminal responsibility.[3]

Observations of Griesinger on distinction between illusions and hallucinations.

§ 737. "The most general and most important sensitive anomalies in states of mental disease," says Griesinger, "are the hallucinations and illusions. By hallucinations we understand subjective sensorial images, which, however, are projected outwards, and thereby become apparently objects and realities. By an illusion is meant the false interpretation of an external object. It is an hallucina-

[1] An Esop, to adopt an illustration of Dr. Liman, fancies himself an Adonis, or a Xantippe thinks proper to regard herself as a woman of soft and tender beauty. Now such assumptions flatly contradict the truth, as it is regarded by the great body of mankind. People such as these are called "fools," though no one thinks of locking them up in a mad-house. For "Esop" is not a real believer in the delusion. If he is, why does he dye his hair? And why does Xantippe paint her cheeks, and resort to so many devices to cover the reality of old age? Yet at the same time, as is further illustrated by this acute observer, it is not always easy to mark in them the point at which *sane* folly passes into *insane* folly. Thus a wise parsimony, by scarcely perceptible steps, may become avarice; and avarice may overstep the limits of sanity, and, under the influence of insane illusions, refuse to eat, for fear of starvation. The only question in each case is, is there with the patient a delusion really insane, and if so, did the delusion produce the litigated act? And this is to be determined according to general psychological and psychopathical tests. And it has been well said by an eminent writer on this topic, Dr. Sander (cited, Liman's Casper, p. 554), that in conducting the inquiry we are not to be so much governed by the specific fancy in question, or by this or that illusion, as by the patient's original psychological state, by the cause and course of the disease, in short, by its development as a whole. "For in such cases we must fall back on the development —history of the concrete case."

See Les Leçons Cliniques de M. Falret, Leçons 3, 4, 5, 6, pp. 95, 185, Paris, 1854; also Etudes Psychologiques, par L. F. G. Renaudin, chap. viii. p. 388, Paris, 1854; and also Dr. Hammond's Essay on McFarland's Case, 4 Hammond's Journ. Psyc. Med. 449.

[2] *Supra*, §§ 46–60, 145.

[3] *Supra*, § 200.

tion when I see human forms while in reality no man is near, or hear a voice which has not spoken. It is an illusion when I take a bright cloud in the heavens for a fiery chariot, or when I believe that I see an old friend when a stranger walks into the room. In hallucination there is no external object, it is a false sensation; an illusion is a false construction, a transformation of a peripheral sensation.

"The motive of this sensation does not necessarily require to exist in the external world; it may also be within the special organism; therefore the false interpretations to which peripheral pains (neuralgic, rheumatic) are subject, are considered illusions, as the idea of being pregnant, which proceeds from unusual abdominal sensations, or that case mentioned by Esquirol, in which a patient had pain in the knee, and kept striking it with the fist, calling out, 'Wait, you rascal, you shall not escape me!'"[1]

"The distinction between hallucinations and illusions was made by Esquirol. It ought to be maintained, although it cannot be adhered to with perfect exactness.

"In the senses of taste and cutaneous sensation especially the distinction is often impossible. In the other senses, too, the view of illusions as false judgments is, in many cases, too limited. They are, in the majority of cases, actual transformations of impressions transmitted by the organs of sense, when, for example, a portrait on the wall appears to roll its eyes and walk out of the frame, or when the visage of an old woman appears to be young and beautiful.

"Here internal images are substituted for real perceptions; it is a mixture of hallucination and real sensorial perception; the latter becomes thereby transformed in the sense of the dominant ideas and frames of mind. We can also express the relation between them so; the hallucinations are either quite complete when they provide the entire object, or they are incomplete (illusions) when to a real external object other qualities which it does not possess are attributed."[2]

[1] Griesinger's Mental Pathol., Syden. ed. (1867). § 52.

[2] Gratiolet.

The following is given by Griesinger as the literature of sensorial delirium: Esquirol, several articles in Dictionnaire des Sciences Médicales, and Traité de l'Aliénation. Bayle, Mém. sur les Hallucinations, Revue Médic., Jan. 1825. Müller, Ueber phantastische

"Hallucinations," continues Griesinger, "may occur in all the senses—in the senses of sight, hearing, smell, taste, and cutaneous sensibility. In individuals sometimes this, sometimes that, frequently several, occasionally all, these various sensorial functions are affected at the same time; the hallucinations are real sensations, not mere fancy. The patient really, and not merely fancifully, thinks that he hears, sees, and smells; and should we meet the sensorial delirium with arguments of reason, we generally receive answers such as Leuret did from one of his patients:[1] 'I hear voices because I hear them—how they originate I know not, but to me they are as distinct as your own voice; if I admit the reality of your words, you must also allow me to believe in the reality of those voices, as to me both are equally appreciable.'"

§ 738. Delusion may spread in such a way as to cover the whole surface of the mind, leaving no sound perception untouched. Dr. Rush, in the following report given by him of the conversation of a patient laboring under this phase, very happily illustrates this incoherence, and at the same time the occasional point by which its intellectual operations are distinguished: "No man can serve two masters. I am Philip, King of Macedonia, lawful son of Mary Queen of Scots, born in Philadelphia. I have been happy enough ever since I have seen General Washington with a silk handkerchief in High Street. Money commands sublunary things, and makes the mare go; it will buy salt mackerel made of ten-penny nails. Enjoyment is the happiness of virtue. Yesterday cannot be recalled. I

Example of general insanity produced by delusions.

Gesichtserscheinungen, Coblenz, 1826. Lélut, De la Folie Sensoriale, Gazette Méd., 1833. Boid, Thatsächliche Bemerkungen über Sinnestänschungen, Friedrich's Magazin, Sept. 17, 1831. Dietz, Ueber die Quelle der Sinnestänschungen, ibid., Heft 111, 1832. Leuret, Fragmens psychologiques, Paris, 1834. Bottex sur les Hallucinations, Lyon, 1836. Marc, Geisteskrankheiten translated by Ideler, i. 1843. Hagen, die Sinnestänschungen, Liepzig, 1837. Baillarger, in Archiv Génér. 1842–3. Patterson, Annal. Méd. Psycholog., Mars, 1844. Likewise the writings of Arnold, Reil, Haslam, Hoffbauer, Neumann, Friedrich, Jessen, Archambault in Ellis's Traité, p. 180, segg., etc. Sinogowitz, Die Geistesstörungen, Berlin, 1843. Michéa, Du Délire des Sensations, Paris, 1846. Baillarger, Des Hallucinations, Mém. de l'Acad. de Méd., tome 12e, Paris, 1846. Brierre, Des Hallucinations, Paris, 1847 (2d edition, 1853). Leubuscher, Ueber die Enstehung der Sinnestänschungen, Berlin, 1852. See, also, 24 Journ. Ment. Sci. 97; 22 *ibid.* 475.

[1] Fragments, p. 203.

can only walk in the night-time when I can eat pudding enough. I shall be eight years old to-morrow. They say R. W. is in partnership with J. W. I believe they are about as good as people in common—not better, only on certain occasions, when, for instance, a man wants to buy chincopins, and to import salt to feed pigs. Tanned leather was imported first by lawyers. Morality with virtue is like vice not corrected. L. B. came to your house and stole a coffee-pot, in the twenty-fourth year of his majesty's reign. Plum-pudding and Irish potatoes make a very good dinner. Nothing in man is comprehensible in it. Born in Philadelphia. Our forefathers were better to us than our children, because they were chosen for their honesty, truth, virtue, and innocence. The Queen's broad R originated from a British forty-two pounder, which makes too loud a report for me. I have no more to say. I am thankful I am no worse this season, and that I am sound in mind and memory, and could steer a ship at sea, but am afraid of the tiller. . . . . Son of Mary Queen of Scots. Born in Philadelphia. Born in Philadelphia. King of Macedonia."[1]

Epidemic character of hallucinations as to loss of identity.

§ 739. Hallucinations involving a belief that the patient has been transformed into various species of animals have been at times almost epidemic. Analogous to these is the belief that worms, frogs, or snakes have taken up their abode in the head or stomach, which consume the brain or entrails. Men have fancied themselves pregnant, and imagined themselves shadows or corpses, or to be constructed of glass, butter, or wax. At one time the belief in a transformation into wolves or other wild animals became so prevalent as to acquire a title to itself (Lycanthropia). In cases of this last phase the disease became so uncontrollable as to impel its victim to a close imitation of the wild animal itself, falling upon other men and animals, and snapping at and biting them. Andral relates a case of a child of fourteen years who tore wildly about the field, biting other children that came in its way, and producing an epidemic consternation in the neighborhood.[2]

§ 740. Griesinger thus speaks of hallucinations of loss of

[1] Rush on the Mind, pp. 242, 243.

[2] Cours de Patholog. Interne, tome iii., Paris, 1836, p. 176. The curious will find a very interesting disquisition on this point in Wierus's work, De Præstigiis Dæmonum, lib. iv. c. 23.

identity: "The patients renounce their former personality, and consider themselves sometimes animals (wolves, oxen, etc.), sometimes historic individuals (Napoleon). Sometimes the whole body is considered dead, or as not really theirs, or as composed entirely of inanimate substances, as wood, glass, wax, butter, etc. At other times the body is merely felt to be extraordinarily heavy, or to have acquired a very great circumference, etc. Observations of Griesinger, on this topic.

"On the other hand, these anomalies of the general sensation are sometimes local, confined to certain parts of the organism. The patient supposes that certain of his members are wanting, or that they are not connected to his body in the way they used to be. For example, he thinks that he no longer has a head, that one of his arms or legs is petrified or made of glass, or he feels as if a certain part were uncommonly large, and the nose in particular is, in many cases, the object of this illusion.

"There are, besides, observed in the insane, as more transient states, sensations familiar to many healthy persons in dreaming, of flying high in the air, of being precipitated from a height, or of general giddiness. Sometimes a veritable aura is felt before an attack, as it is before an epileptic seizure.

"The seat and the more immediate causes of these anomalies of the general sensation are difficult to understand. In several cases, indeed, they depend—for example, the feeling of absence of a part of the body—on evident anæsthesia, or more frequently an analgesia of the organ. At other times, however, the peripheral sensibility of the cutaneous surface, and perhaps even the sensibility to pain, is fully maintained, and obscure modifications of the muscular sensibility, which likewise appear to play an important part in ordinary dreaming, may be the original disorder which the explanatory reflection lays hold of to form delirious conceptions. The transformation into animals appears to be much more related to the mind in its origin, and the basis of this false idea may depend on the appearance and influence of certain instincts peculiar to certain species of animals, as the cruelty and ferocity of the wolf. But here also a marked deviation from the normal general sensation is always necessary to the full development of the ideal metamorphosis.[1]

[1] Griesinger's Mental Pathol. Syden. ed. (1867) § 49. Leuret (Fragm. Psychol. sur la Folié, Paris, 1834, p. 101) has made an in-

"Examples of insane persons considering themselves dead, and not recognizing their body as their own, are numerous. Esquirol mentions that, in a woman who believed that the devil had carried away her body, the surface of the skin was completely insensible.

. . . . . .

"To such states there are also analogues in acute diseases. A medical friend has frequently told me that he, in even slight febrile affections, has always the sensation of remarkable enlargement of the limbs.

"A convalescent from fever believed that he was really two persons, one of whom lay in bed while the other walked about. Although he had little or no appetite, yet he ate a great deal, because he had to nourish two bodies.[1]

"Patients with paralysis of sensation of one-half of the body have sometimes the idea that another person, or even a corpse, lies beside them in bed.[2] Such false opinions belong to the so-called illusions, soon to be considered.

"The sensation of flying in dreams appears to be due to acceleration of the inspiratory movements, and that of being drawn from a height to their becoming slower (Gratiolet); corresponding images are associated with these.

"All considerable alterations of the common sensation are always amongst the most important elements of mental disease. When this general basis of the bodily sensations is falsified, corresponding false ideas are formed with extreme facility. These anomalies are always to be specially investigated, as they occasionally furnish indications for therapeutical treatment."[3]

§ 741. According to Hagen,[4] the cause of the delusions of the

teresting collection of several old examples of the so-called Lycanthropia, and several cases of more recent date of insane persons wandering in the woods and carrying off and even killing children, from a fierce instinct to murder. Wier narrates an example of a man from Padua who, in the year 1541, believed himself transformed into a wolf, and, on the open plain, attacked and slaughtered those whom he met. "I am really a wolf," said he, "and the reason why my skin is not hairy like that of a wolf is that it is reversed and the hairs are inside." To convince himself of this he made incisions in his body and cut his legs and arms, so that he died of the wounds.

[1] Leuret, loc. cit., p. 95.

[2] Bouilland, Traité de l'Encephalite, Paris, 1825, p. 64.

[3] Ibid.

[4] Compare Wagner's Handwörterbuch der Physiologie, vol. ii. p. 811.

senses is either a mere physical stimulus, which, acting upon the fountain-heads of the sensational nerves in the brain, produces eccentric sensations, and induces the individual to incorporate his sensations into an image, in which case it will depend upon the particular circumstances of the case, especially on the mental and moral condition of the individual, whether or not such apparitions are believed to be genuine. And upon another hypothesis, suggested by the same author, the disease is only a strong morbid susceptibility of the brain to eccentric sensations, with which some fancy or other comes into such a collision as to act as the stimulating cause of a paroxysm, bringing, at the same time, a complete phantom before the external sense, just as, in cases of convulsive diseases, St. Vitus's dance, etc., an intended slight motion may bring a convulsion into that particular system of muscles. Great care must be taken, however, not to include under this head what is not really a delusion of the senses. If, for instance, a madman takes a person or a black cat for the devil, there is no delusion of the senses. On the contrary, in supposing the devil to have assumed such a shape, the maniac only directs his madness to an object of which, in itself, he has a correct perception. Delusions, also, we are admonished by Schürmayer, must not be mistaken for *confusion of the senses*, which consists in an entire obstruction of the conceptions, an incapacity to obtain adequate apperceptions, and sometimes in an entire want of objective consciousness and recollection.

Hagen's theory of cause of delusions.

§ 742. The following interesting illustration of partial delusion is given by Dr. Mayo: "In a case to which I was called in by Dr. Monro, a few years ago, it was our painful duty to resist the liberation of a patient, an old lady, whose confinement under certificates had continued for sixteen years. For six years she was described as having been in a state, first of acute, and then chronic mania. For many years, we learned, that she had regained the power of conversing consecutively and sensibly, indeed without the smallest evidence of incoherent or irrational remark, and such appeared to us her present state. The objections which existed to her being then considered sane, if she had been insane up to the time we saw her, on the ground of her advanced age, weighed on our minds, but seemed insufficient. The evidence of her attendants, who considered her still

Illustration of partial delirium by Mayo.

insane, on the ground of occasional outbreaks of temper, was that of interested witnesses. She was a patient in chancery, and the visiting physicians had become favorably disposed to her enlargement, as a sound-minded person. Now, the question was in this instance determined in our minds by a discovery of a very remarkable notional delusion which held its ground in her mind. In a set of drawers in this lady's bedroom, and in certain trunks there, to which we were conducted without her knowledge, we witnessed a large and very heterogeneous and dirty collection (dirtiness had been a symptom of her insane state), consisting of old bottles, broken cups and saucers, brass knobs, bits of old string, shreds of linen and cloth, small bundles of wood, such as light fires, pieces having been apparently picked up and tied together, a cup containing dirty food of the most disgusting appearance, which had evidently been long there, bits of valueless stones, coals, nails, etc. This accumulation, which could not have been extemporized by the attendants to make out a case, and of which accordingly the patient must have been long aware, would have occasioned strong doubts as to her sanity, even if no prior grounds of suspicion had existed; but carefully preserved by one who up to a recent date had been so far suspected of insanity that she had not been set free by the visiting commissioners, who was in her seventy-first year, and therefore the less likely to have obtained a cure, it became, in the opinion of Dr. Monro and myself, a conclusive ground for resisting this lady's immediate enlargement."[1]

§ 743. Particular hallucinations are classed by Abercrombie under the following heads:—

Classification of partial hallucination by Abercrombie.

"1. Propensities of character, which had been kept under restraint by reason or by external circumstances; or old habits, which had been subdued or restrained, developing themselves without control, and leading the mind into trains of fancies arising out of them. Thus, a man of an aspiring, ambitious character may imagine himself a king or great personage; while in a man of a timid, suspicious disposition the mind may fix upon some supposed injury, or loss either of property or of reputation.

[1] Mayo on Medical Testimony in Lunacy, pp. 33, 34. See, however, Dr. Storer's remarks in his "Insanity in Women," p. 120.

"2. Old associations recalled into the mind, and mixed up perhaps with more recent occurrences, in the same manner as we often see in dreaming. A lady, mentioned by Dr. Gooch, who became insane in consequence of an alarm from a house on fire in her neighborhood, imagined that she was the Virgin Mary, and had a luminous halo around her head.

"3. Visions of the imagination which have formerly been indulged in, of that kind which we call waking dreams, or castle-building, recurring to the mind in this condition, and now believed to have a real existence, I have been able to trace to this source of the hallucination. In one case, for example, it turned upon an office to which the individual imagined he had been appointed; and it was impossible to persuade him to the contrary, or even that the office was not vacant. He afterwards acknowledged that his fancy had, at various times, been fixed upon that appointment, though there were no circumstances that warranted him in entertaining any expectation of it. In a man, mentioned by Dr. Morison, the hallucination turned upon circumstances which had been mentioned when his fortune was told by a gypsy.

"4. Bodily feelings giving rise to trains of associations, in the same extravagant manner as in dreaming. A man, mentioned by Dr. Rush, imagined that he had a Caffre in his stomach, who had got in at the Cape of Good Hope, and had occasioned him a constant uneasiness ever since. In such a case, it is probable, that there had been some fixed or frequent uneasy feeling at the stomach, and that, about the commencement of his complaint, he had been strongly impressed by some transaction in which a Caffre was concerned.

"5. There seems reason to believe that the hallucinations of the insane are often influenced by a certain sense of the new and singular state in which their mental powers really are, and a certain feeling, though confused and ill-defined, of the loss of that power over their mental processes which they possessed when in health."[1]

The law with regard to delusions and hallucinations has been discussed in prior sections.[2]

[1] Intellect. Pow. 255, 256. In this connection see a remarkable letter to a public journal from an insane patient, quoted 22 Journ. Ment. Sci. 454.

[2] *Supra*, §§ 34–60; 125–146.

CHAPTER IX.

LUCID INTERVALS.

Law recognizes possibility of lucid intervals when proved, § 744.
Nature of lucid intervals; Renaudin, § 745.
Suggestions of Ellinger and Schürmayer, § 746.
Fluctuations of disease, § 747.
Restoration of responsibility corresponds with progress of recovery, § 748.
Remarks of Dr. Rush on this topic, § 749.
Mania frequently periodical, § 750.
Instance given by Morel, § 751.

Law recognizes possibility of lucid intervals when proved.

§ 744. So far as concerns the legal relations of this topic, it has been shown[1] that the law recognizes the possibility of lucid intervals in insanity (always, however, to be positively and affirmatively shown), during which the patient is to be viewed as capable, when acting independently, of certain business and testamentary acts, and of assuming at least a modified penal responsibility. It must be kept in mind, however, that by many eminent psychological physicians the possibility of truly lucid intervals is denied.

§ 745. As a leading authority of this school may be mentioned Renaudin, from whose argument the following is condensed:—

Nature of lucid intervals; Renaudin.

Lucid interval is the name ordinarily given to the condition in which the insane person is placed at the end of a strong delirious excitement, or when he awakes from a profound stupor.

The prevalent tendency is to assert the existence of a lucid interval when delirious ideas no longer manifest themselves, and when the insane person shows himself accessible to other pre-occupations, and thus appears to enjoy the full amount of moral liberty allowed to him.

It has been already said that the approach of insanity is rarely sudden, and that, being based in some respect upon a natural or

[1] *Supra*, §§ 61–64.

acquired predisposition, it is preceded by a period of incubation, that paves the way for a manifestation of the disorder often long before its actual appearance. When a retrospective examination of the antecedents of the disease is made, a proof is found of the latent advances which insanity makes.

But under this apparent reason is concealed a disorder which makes a sensible progression every day. Irritability is developed; the regimen is irregular; the affective sentiments are changed or perverted; everything has become an object of resistance; delirious convictions are organized upon perceptive errors every day more numerous; and finally insanity shows itself in a critical excitement, the more decided as the lesion of sensibility has become more complete, and as the incubation is marked by a more or less concentrated struggle. The patient is then isolated; irritating causes are removed, and immediately the over-excitement diminishes; a calmness succeeds. This transient remission, however, ceases as soon as the unhealthy influence regains its empire, and we then see that that which was called a lucid interval was, in fact, but a transient remission.

Continuity is essentially the characteristic of monomania and lypomania. Either the insane person, by a convalescence, advances to a complete cure, or he still remains affected with the original type. Every intermediate situation is inadmissible, except when an accidental affection, causing a kind of metastasis, for the moment suspends or masks the madness. Whenever it is not a true crisis, it only causes a fleeting remission of the symptoms rather than of the pathological condition; and the physician assumes a serious responsibility when, simply on the face of this apparent calm, he conceives the possibility of the patient's return to his family, where but too soon the causes will be found reunited that restore to insanity all its intensity. It is in not sufficiently resisting the desires of friends, that the physician paves the way for these returns, which are less relapses than the recrudescence of an uncured pathological state.

But though, in an absolute diagnostic point of view, we reject the lucid interval—though, when the existence of mental unsoundness has been once shown, we do not admit that the remissions diminish irresponsibility,—we still think that the deranged can perform certain acts with comparative intelligence, and can even

exercise discretion, provided that he is placed under the influence of certain protecting conditions. The regulating discipline of an asylum tends greatly to this result, and therefore it is not astonishing if insane patients can perform certain civil acts of a simple character, and may consent to a division of property, or even authorize a marriage. The legality of the act is essentially subordinate to a previous appreciation of the extent of the delirium at the time, and the relations existing between the action and the delirious conception. So, though not admitting the existence of a lucid interval, we still believe that the madman may be placed in a situation that permits him to appreciate the action demanded of him. In a criminal point of view, this distinction cannot be established, since the action is a logical consequence of the madness; and daily observation teaches us that it is during these moments of apparent sanity that the maniac meditates and prepares the most dangerous projects, as much against himself as against others. The ingenious combination of means that the lypomaniac uses in order to obtain his object is urged in vain as proof of lucidity, since the delirious conceptions, whilst rendering the premises false, are far from always deranging the logical chain of the other intellectual operations. According to his own conceptions, the lypomaniac is an oppressed person who conspires against his enemies, and as he is the most feeble, he calls cunning to the aid of his legitimate means of defence.

In the maniac, especially in the paroxysm, we observe a disordered agitation, accompanied with such an amount of incoherence that the affected person appears to be rather the sport of some strange motive power than the originator of this extreme mobility. There are times when even this storm is dissipated as if by enchantment. Dissimulation becomes possible for a certain time; the delirium is in some degree suspended, and we may be led to suppose a spontaneous return to reason. How often have we seen maniacs cease to rave during the questioning of a judge, and immediately afterwards recommence their course of wanderings.

The more vivid the excitement is, the more considerable is the expenditure of the vital forces; so that when it has lasted a certain time, a period of prostration arrives; but, allowing a remission of some somatic symptoms, still the incoherence of ideas is persistent with other symptoms. Sometimes the transition is rapid; and

then, above all, is it necessary to attribute the situation to its true causes, in order not to expose the examiner to an error of diagnosis.

Periodicity is generally observed in mania ; and it is then that insanity of actions must be distinguished from insanity of ideas. Though often united, still they are sometimes isolated from each other, or follow one another. It is on this account that the most extravagant acts sometimes correspond with a certain intellectual lucidity, which at the first glance may impose upon us ; and it is then that we observe persons thus insane justify their actions by the most specious reasonings. We must not, however, take this intellectual waking for a lucid interval ; for, although masked, the delirium still continues.

In other cases, the madness is less intense. All excitement has disappeared, and the insane person answers all our questions so reasonably as to lead us to infer the existence of a lucid interval ; but the illusion is soon destroyed when, in pushing our examination, we weary him with questions : he becomes agitated ; loses the thread of his ideas ; becomes more and more incoherent, and so proves to us that he has had what scarcely might be called a transitory remission.

There are cases where the periodicity appears more determined, and where the conduct of the patient betrays no sign of the insanity which he formerly manifested. The lucid interval can perhaps be sometimes admitted under these circumstances ; but it is still necessary to exercise some caution in regard to the value of those appearances. If the patient denies his situation ; if he refuses to acknowledge the principal acts which have characterized his paroxysm ; if he seeks to attribute them to some foreign cause, it is a proof that the reason is not sound, and that a paroxysm is always imminent ; and lucidity cannot be admitted, since errors of perception and judgment still exist. This observation especially applies to that kind of mania in which excessive irritability plays the principal part ; where the remissions are irregular, and the paroxysms are shown under the influence of the slightest cause. We cannot, then, consider this momentary repose of a permanent effect which is always ready to break out, as a lucid interval. We might say as much of the period of prostration following a period of strong excitement.

When periodicity is complete, it is recognized at first by the

appearance of the paroxysm, which has, in some measure, a critical termination. The lucid interval can then be admitted, if there is a complete contrast between the two situations, if the patient appreciates them, and if the manifestation of each fit is shown by an approach which is always regular, and which is always produced under the influence of the same causes. It is, if we can thus express ourselves, a momentary cure, which is prolonged for a longer or shorter period of time, and which often finishes by becoming a complete one.

Finally, when the affection passes to the chronic state, the patient raves less, because excitement fails him, and also because his will is in want of a regulating force. We cannot consider this as a lucid interval where the patient is unable to act except when directed by another's mind. When mania passes into dementia, the transition is sometimes shown by an apparent reawakening of reason, which is, as it were, its last glimmer. Generally it is the mobility of maniacs which is most favorable to the inferences which impose upon the superficial observer so as to cause him to admit the existence of a lucid interval.

The stimulated attention of these patients fixes, for a moment, this mobility, directs cunning towards the accomplishment of a project, where a personality is in play, and we are often surprised with the address shown in organizing a plan of escape. But, in spite of this incidental derivation, the maniacal temperament still remains the same, unless, indeed, this transitory action of the mind should become a crisis.

Dementia, where the psychico-somatic existence is gradually extinguished, is a ruin in which a trace of a better period is sometimes found. If, occasionally, remembrances of the past show themselves, this apparent lucid interval is no more than a retrospective reasoning without actual application. When, instead of being the termination of the other forms, dementia is primitive or idiopathic, the lucid intervals can be sufficiently clearly drawn, and the diagnosis does not present as many difficulties as in the other forms. In fact, the demented cannot dissimulate ; since, to do this, a reactive power would be necessary, which in him is entirely wanting. He cannot conceal his incapacity under the mask of an energy whose absence is the principal feature of his disease. More submissive than others to somatic influences, he is sometimes a

prey to an almost maniacal excitement; but if this is not critical, it forms an expenditure of power resulting in pure loss, and making one more step in this period of prostration. In a word, if the man lives for a moment in the past, he is as nothing in the present; and it is under privilege of this restriction that a lucid interval, provoked by some foreign stimulant, but without root in an exhausted moral system, can be admitted.

Hence we see that the lucid interval is of much rarer occurrence in mental unsoundness than is generally thought. It is in mania that the periodicity of regular paroxysms permits us to admit it; but then, also, it is still necessary to guard against being imposed upon by a remission of excitement which is not that of the frenzied condition.[1]

§ 746. The following suggestions are given by Ellinger, and repeated by Schürmayer. As a general thing, there is no recovery from mental unsoundness which has been attended with permanent and general delusion: in the other forms such recovery sometimes, though very rarely, takes place suddenly, the consequence of strong excitement, as a sudden outburst of rage, or even in sleep, without any preceding physical or moral change. Its general development, however, is slow, being marked with a gradual lessening of the effective irritations, with an increased coherency and consequentiality of thought, with the return of the natural inclinations and appetites, of sleep and nourishment, and with a disappearance of the physical anomalies. Sometimes, however, it advances with a more fluctuating step, agitated as it were with mental tides, the flood of each of which, however, falls below the high-water mark of its predecessor, while each ebb more and more nearly approaches the line of sanity. To constitute a recovery, the patient must at least have regained the reason which he enjoyed before the appearance of the disease: he must have reacquired a taste for his former occupation, must again display his former inclinations and points of interest, must understand what he remembers of his disease when assisted by explanations, must speak of it as of something to which he is now superior, must clearly see the erroneous nature of the delusions

Suggestions of Ellinger and Schürmayer.

[1] See Etudes Physio-Somatiques sur l'Alienation Mentale, par L. E. F. Renaudin, chap. ix. p. 522. Paris, 1854.

under which he labored, and must be really contented and internally at peace. But if, on the other hand, the former character of the disease has only disappeared in part; if the old insane grudge against one person or another is manifested; if there is a smothered rage, or aversion to persons or things formerly cherished; if the alleged convalescent refuses to acknowledge his disease in general or in regard to particular points; if his conduct is marked by unnatural irritability, suspicion, or boisterous and immoderate joy, or by other anomalous features, a perfect recovery has *not* taken place, although, in point of intelligence, formal and substantial, not the slightest anomaly is perceptible.[1]

Fluctuation of disease.

§ 747. Where the patient's recovery from a mental disorder is not clearly established, it may be doubted whether an alleged criminal act was committed under circumstances involving the full responsibility of the agent. Whether the malady was of long or short duration, whether it was more or less intense, is here of no decisive import, and of equally little moment is the apparent reflection and preparation with which the act may have been committed.

The different kinds of improvement or interruption in cases of unsoundness of mind, present various features, which vary in accordance with the duration and degree of abatement.

1. *Intervallum lucidum*, with a restoration of consciousness in general and of insight into the past and present, but without entire clearness, and with a continuance of a more, though not entirely subdued temperament. The patient is not yet the same as he was before the disease overtook him. If he was, he would have to be regarded as restored to health, and there would, in its strict meaning, be no question as to a lucid interval.

2. *Remission* differs from a lucid interval only in degree, being generally attended with a subsidence of the external manifestations of the disease, not sufficient, however, to be mistaken for recovery.

3. *Alternation* is the term given to change from one form of mental unsoundness to another, particularly from depression to mania and the converse, not however from psychical to bodily, or from bodily to psychical manifestations. Where for instance the individual has long suffered from morbid depression or elation of

[1] Compare Ellinger, p. 169. Schürmayer, § 573.

spirits, this may gradually decrease and give place to an apparent return of health, which, however, does not last long, but sooner or later lapses into the opposite condition, so that depression turns into mania, and mania into depression.

4. *Intermission*, when the disease recurs at more or less regular periods, and the disease presents no anomalous symptoms.

§ 748. The restoration of moral responsibility progresses in correspondence with the progress of recovery. In passing, therefore, upon a given case, regard should be had, not only to the individual circumstances, but also to the time intervening between the cessation of patent insanity and the commission of the offence.[1]

Restoration of responsibility corresponds with progress of recovery.

§ 749. On this topic Dr. Rush thus speaks: "The longer the intervals between the paroxysms of madness, the more complete is the restoration to reason. Remissions rather than intermissions take place when the intervals are of short duration, and these distinguish it from febrile delirium in which intermissions more generally occur. In many cases everything is remembered that passes under the notice of the patient during a paroxysm of general madness, but in those cases where the memory is diseased as well as the understanding, nothing is recollected. I attended a lady in the month of October, 1802, who had crossed the Atlantic Ocean during a paroxysm of derangement, without recollecting a single circumstance of her voyage any more than if she had passed the whole time in sleep. Sometimes everything is forgotten in the interval of a paroxysm, but recollected in a succeeding paroxysm. I once attended the daughter of a British officer who had been educated in the habits of gay life, who was married to a Methodist minister. In her paroxysms of madness, she resumed her gay habits, spoke French and ridiculed the tenets and practices of the sect to which she belonged. In the intervals of her fits, she renounced her gay habits, became zealously devoted to the religious principles and ceremonies of the Methodists, and forgot everything she did and said during her fits of insanity. A deranged sailor, some years ago, in the Pennsylvania Hospital, fancied himself to be an admiral, and walked and commanded with all the dignity and authority that are connected with that high rank

Remarks of Dr. Rush on this topic.

[1] Schürmayer, Gericht. Med. § 574.

in the navy. He was cured and discharged; his disease some time afterwards returned, and with all the actions of an admiral which he assumed and imitated in his former paroxysm. It is remarkable that some persons when deranged *talk* rationally, but *act* irrationally, while others act *rationally* and talk *irrationally*. We had a sailor some years ago in our hospital, who spent a whole year in building and rigging a small ship in his cell. Every part of it was formed by a mind apparently in a sound state. During the whole of the year in which he was employed in this work, he spoke not a word. In bringing his ship out of his cell, a part of it was broken. He immediately spoke and became violently deranged soon afterwards. Again, some madmen *talk* rationally and *write* irrationally; but it is more common for them to utter a few connected sentences in conversation, but not to be able to connect two correct sentences together in a letter. Of this I have known many instances in our hospital."[1]

Mania frequently periodical.

§ 750. Mania frequently assumes a type in which the periods of return and of cessation are marked with the greatest exactness and regularity.[2] Medicus, in his history of periodical diseases,[3] tells us of a girl who was subject to a delirium which came on every evening at exactly the same hour, and lasted three hours and a half. Of two women attacked with periodical madness, one was deranged nine days in each month, and the other two days.[4]

Instance given by Morel.

§ 751. Morel (1866)[5] tells us of a lady who for a number of years was afflicted as follows: When enjoying the full possession of her faculties, and with no other premonition than that of peculiar health, and of augmented desire to leave the asylum in which she was confined, she would fall into a sleep marked by terror (cauchemar) and excitement. She would soon lift herself up, and, with cries of horror, spring out of bed. The fit thus began, and then ran through its course. Her face would be distorted, she would refuse nourishment, beat against the wall, and bite and tear, in her agony, whatever came in her

[1] Rush on the Mind, pp. 162, 163, 164.

[2] Siebold, Gericht. Med. § 217.

[3] Kailsr. 1764.

[4] See also Henke's Zeitschr. 13 Bd. sec. 159.

[5] Traité de la Méd. Lég., etc., p. 479.

way. About the twenty-first day from the beginning of the attack, relief would begin, and she would fall into a stupor, and then gradually return to sound reason. This lucid interval would last about three weeks, during which she would be in all respects refined and intelligent. This condition has lasted thirteen years, with no other permanent change than that of perhaps a slight general weakening of intelligence.

§ 752. Dr. Liman, whose great experience, as well as eminence, as a psychological physician, has been already frequently noticed, states[1] that practically, so far as concerns the German criminal courts, the question of "lucid intervals" comes up very rarely for adjudication. "At least," he says, "among the hundreds of cases as to which I have given opinions, there was not one in which the existence of a 'lucid interval' was the subject of contest. In penal cases the defence goes beyond this, maintaining the existence of actual derangement at the time of the act, or assuming, from some prior mental malady, that the defendant at the time of the act was of unsound mind."

[1] Liman's Casper, 1871, p. 618.

CHAPTER X.

TREATMENT OF INSANE CRIMINALS.

Importance of issue, § 753.

I. Retribution.

Confinement necessary as retribution, § 754.

II. Prevention.

And also for prevention, § 763.

III. Example.

And also for example, § 765.

IV. Reform.

And so for reform, § 766.

§ 753. The enlargement of the range of insane irresponsibility which the preceding sections recognize, makes the subject of the subsequent treatment of the insane offender of momentous importance. Even if we adopt the severest legal tests, yet when a case occurs of an acquittal on ground of insanity, as it sometimes must on the most stringent principles, the offender, who in this case, on the law's own assumption, is a mere "animal," should be no more permitted to range the streets than should a mad dog or a mad bull. But in point of fact, there are a myriad of phases of mental unsoundness, none of which are consistent with entire responsibility, and yet each of which has its distinct degree of moral culpability attached to it. Rare, indeed, are the instances, where there is not a consciousness of guilt, which, though distorted or faint, is, nevertheless, appreciable. Still rarer are the cases of acquittal in which the insanity of the perpetrator is so abhorrent as to exclude it from the range of imitation by those who may desire to commit crime with impunity. And if these considerations be thrown aside, there remains the fact that insane crime becomes epidemic when it becomes heroic; and that the only way to divest it of this quality, is to subject it to that wholesome but homely discipline which strips it of its sentimentality, and, at the same time, destroys its capacity for mischief. In this view it is recommended that wherever such provision does not already exist, there should be a separate penitentiary establishment for insane offenders, where

Importance of issue.

they may continue to be confined, under the severest discipline consistent with health, until it appear, on evidence taken upon due notice to the prosecuting authorities, that the patient is entirely sane.

I. RETRIBUTION.

§ 754. The question here depends on that of guilt. Was the offender in any sense a moral agent in the act complained of? The answer presupposed by the present inquiry, viz., that of the relations of a person judged irresponsible on account of insanity, is, that he was not. And in a strict technical sense, this is undoubtedly true. The inquiry, however, may be pushed farther back, and here the case of *delirium tremens* may be taken as an illustration.[1] *Delirium tremens*, even on the most stringent principles, exonerates its subject from the penal consequences of a crime committed under its direct influence. And yet it is clear, *first*, that *delirium tremens* is the result of a prior vicious indulgence; *second*, that if the patient be permitted to wander about when the delirium continues, he will do further mischief; and, *third*, that if he escape with entire impunity, the example will be likely to be followed as a pretext, if not caught as a contagion. And under these circumstances what is to be done? It is plain that some species of confinement must be resorted to; and that if such a method of discipline be applied, it will be, in a moral point of view, thoroughly justified by the delinquency which was the voluntary cause of the diseased mental condition under which the crime was committed.[2]

Confinement necessary as retribution.

[1] This question has already been touched upon, and the authorities bearing upon it have been noticed. See *supra*, § 202. In opposition to the views expressed in the text will be found Mr. M. B. Sampson's "Criminal Jurisprudence considered in relation to cerebral organization." London, 1843.

[2] In the eighth edition of my work on Criminal Law, published in 1880, §§ 1 *et seq.*, I endeavored to show that penal discipline was to be primarily based on retributive justice; and I argued at length that to rest punishment primarily on the grounds of either prevention or of reformation was (1) to invest the state with despotic prerogatives; (2) to limit punishment to the cases where prevention or reformation could be worked; and (3) to defeat the very object in view, since so far from unjust punishment (and if the condition of justice be imposed, then the theory of prevention or of reformation as the primary object is abandoned) preventing crime and producing reformation, it would, in proportion to the

§ 755. What has just been said of *delirium tremens* applies with greater or less exactness to all other cases of mental unsoundness. Insanity, which is not congenital, or the result of accident or old age, is in most cases the result of causes which the patient himself might have averted if he had chosen.[1] And particularly is this the case with that very species of mental unsoundness—that of monomania, or moral insanity—which is the cause of the greatest difficulty in the present connection. This is well stated by Dr. Barlow, in his essay on this topic:—

§ 756. "I have said that mental derangement and madness are different things; thus, a person may fancy he sees others around him who have no existence, as in the well-known cases of Nicholai, of Berlin, and Dr. Bostock. This is a certain degree of mental derangement while it lasts; but as both soon satisfied themselves that these personages were merely the creation of a morbid physical state, they were not mad. A man of less resolution would have shrunk from the labor of convincing himself that he was fooled by his senses, and would have insisted that the figures were real, and then he would have been mad. Of these cases Dr. Connolly very justly remarks: 'Let any one reflect how Nicholai preserved his reason under such visionary and auditory delusions for so many months; and why the English physiologist, though visited with the images which are so well known to be familiar with mad people, never lost the use of his excellent understanding. The ready answer will be, they never believed in their real existence. But why did they not? And why does the madman believe in their real existence? The evidence of both is the same, the plain evi-

extent of its infliction, engender towards the government feelings of hatred and contempt by which the good effect of penal discipline would be destroyed. The only way, in fact, as I urged, to make punishment preventive and reformatory, is to make it just. In a review of my book in the *Kritische Vierteljahreschrift für Gesetzgebung und Rechtsenssenschaft*, for 1881, p. 274, the position taken by me is declared to be in accordance with the views of the editors of that paper, among whom at the time were Bluntschli (since deceased), one of the ablest publicists and jurists of this century, and Brinz, one of the most authoritative commentators. Making retributive justice the primary object of punishment is the best way, as is elsewhere shown, to secure reform and prevention. Unless a punishment is in itself just, it will neither reform the criminal nor prevent further crime. Instead of repressing and controlling, it will exasperate and stimulate to fresh lawbreaking.

[1] See *supra*, §§ 115, 118, 403, where this subject is discussed.

dence of sense. The explanation must be this. The printer of Berlin and the physician in London retained the power of comparison: they compared the visual objects of delusion with the impressions of other senses and the perceptions of other persons, and became convinced of their unreality. 'This is exactly what madmen cannot do. One form of madness consists in this very illusion of sense, but it is conjoined with the loss or defect of the comparing power, and the madman concludes that what is only an illusion is a reality. But the illusion is not the madness.' Thus, according to the opinion of this very able judge, the affection of the brain which causes these delusions *is not* madness, *but the want of power or resolution to examine them is.* Nothing, then, but an extent of disease which destroys at once all possibility of reasoning, by annihilating or entirely changing the structure of the organ, can make a man necessarily mad."

§ 757. "A man may labor under a mental delusion, and yet be a responsible agent; and, if sanity or insanity be in a great many instances the consequences of a greater or less resolution in exerting the power of reasoning still possessed, the same kind of motives which influence a man in common life are still available, though they may require to be somewhat heightened. It is on this principle that the treatment of lunatics has been generally conducted. Fear, one of the lowest, but also one of the most general of instinctive emotions, has been called in to balance the delusions of sense, and, excepting in cases where the structural disease is so extensive as to deprive the man of all power of connecting cause and effect, it has been found sufficient to curb violence, and enforce a certain degree of peaceable demeanor towards the attendants. And in this the insane person differs not from the cultivated man who is left at liberty, whose self-control rarely amounts to more than the avoiding actions which would have unpleasant consequences to himself. Suppose an irascible man, incensed by a false report, which, however, he believes to be true; he seeks his supposed enemy, and horsewhips or knocks him down; he does not assassinate, because he fears for his own life if he does; for it is clear that no feeling of duty has held his hand, or he would not have transgressed the laws both of God and man by thus revenging himself. The madman has the false report from his own senses; wherein do the two differ? Neither has employed means within his power to ascertain the

truth, and both are aware that such vengeance is forbidden. I can see no distinction between them, save that the delusion of sense has, as a chemist would say, decomposed the character, and shown how much of the individual's previous conduct was rational, and how much the result of mere animal instinct. It would be well for the world if the *soi-disant* sane were sometimes to ask themselves how far their sanity would bear this test, and endeavor to acquire that rational self-command which nothing but the last extremity of cerebral disease could unseat. We do not descend from our high rank with impunity: and, as, when the matter has become organized, if the process of change occasioned by the vital force be impeded or arrested, the plant pines away and perishes; as, after the organs of locomotion have been superadded, the animal debarred from the use of them languishes and becomes diseased; so man, if he give not full scope to the intellectual force, becomes subject to evils greater than animals ever know, because his nature is of a higher order."

§ 758. "Neither do severe injuries from external causes, though, like paralysis, they might cause a loss of those faculties which connect man with the world about him, *necessarily* disconnect him with the world within, so as to place him beyond his own command.

"A case has been communicated to me illustrative of this. A young lad, who had been carefully instructed in the principles of religion and virtue by the clergyman of his parish, afterwards went to sea. When he was about twenty-two, he unfortunately fell from the mast upon his head on the deck, and the injury to the brain was such that he was discharged from the service in a state of imbecility, and sent home to his parish. He was then in possession of the use of his limbs and hearing; but articulation was apparently difficult to him, and collected thought, which should enable him to speak connectedly, still more so; his sight, too, was subject to a delusion which made him imagine he saw gold and silver coin strewed about on the ground; which, as was natural, he eagerly endeavored to pick up. He was now visited by the clergyman who had been the instructor of his youth, who in kind terms assured him he was under a false impression, and advised him to give no heed to what he imagined he saw. The poor young man thanked him, and promised to do as desired, and for a time abstained from attempting to pick up the coin, but gradually the delusion became too strong for

his resolution, and he recommenced. Yet, after every visit from his former instructor, he again controlled himself for a time; and, if he did not come, anxiously sought him at his own house. He died in a few months, but during the whole time was mild and submissive, seeming perfectly aware that his mind was disordered; and, like a child who distrusts his own power, seeking to throw himself on the guidance of one whose kindness he remembered, and whose character he respected. This man was suffering mental derangement from injury of the parts, but was not insane; for the faculties left him were rationally exercised.

§ 759. "Cases of this kind have been considered by some as a peculiar type of insanity. By French authors it is entitled *mania sans délire*. Dr. Prichard styles it *instinctive madness*. I am inclined, nevertheless, to refer such deranged propensities in some instances to a peculiar morbid state of sensation, and these will come under the head we are now considering, consequently the desire is not irresistible, though strong, for we see that it has been successfully resisted; in others I should refer it to the second class, under the head of 'Inefficiency of intellectual force,' and then it depends on the resolution of the person so affected whether the morbid sensation shall be meditated on and indulged, and thus acquire fresh force, or whether, by exciting other sensations, it shall be weakened and by degrees vanquished.

§ 760. "There is no greater error than to suppose that thinking about a propensity which ought not to be gratified will conquer it; on the contrary, every hour of lonely thought gives it fresh force: but let the man plunge into business that must be attended to, or even a lighter occupation, so it be an engrossing one; and do this resolutely, however irksome it may at first appear, and the very repose thus given to the diseased part, if there be disease, by throwing the whole stress on other portions of the brain, will assist in effecting a cure.

§ 761. "When a man has reached mature age without making any effort to render the brain subservient to the rational will, the fatigue and even pain consequent on the endeavor to obtain the mastery over it is such that few have resolution to undergo it voluntarily. Thus the man subsides more and more into the animal, an is at last guided only by those instinctive emotions which belong to the vital force merely. His passions assume a delirious violence,

and he is only distinguished from the brute by the greater skill with which he pursues their gratification. There is no *disease* of brain, but it has been left unexercised and ungoverned till it is as unmanageable as a limb that has been treated in the same way.

"Toes have been used for writing and other arts which are usually performed by fingers; they are *capable*, therefore, of such use, but those who have constantly worn shoes cannot direct one toe separately from the rest, as they can the fingers. Yet with much trouble this power of directing might be acquired. It is thus that the brain, unaccustomed to direction from the intellectual force, rebels against it, and, if this latter fails to assert its sway, it may justly be termed inefficient. In a man thus animalized, the actions differ from those of his more spiritualized fellow men, who happily are more numerous; and, when they find no such motive as *they* would consider a sufficient one for his conduct, they call him mad, by way of accounting for it. He commits a crime, and a plea of insanity is set up as a shelter from punishment. I will give an instance. It is recorded by the elder Pinel: 'An only son, educated by a silly and indulgent mother, was accustomed to give way to all his passions without restraint. As he grew up, the violence of his temper became quite uncontrollable, and he was constantly involved in quarrels and lawsuits. If an animal offended him, he instantly killed it; yet, when calm, he was quite reasonable, managed his large estate with propriety, and was even known to be beneficent to the poor; but one day, provoked to rage by a woman who abused him, he threw her into a well. On his trial, so many witnesses deposed to the violence of his actions, that he was condemned to imprisonment in a mad-house.' Yet any choleric man who does in his rage what he is sorry for afterwards is as much insane as this man was; both are under the influence of the vital force. A shock to some nerve of sensation stimulates the sympathetic system; the circulation is hurried, and the blood, flowing more rapidly through the brain, gives an unusual activity to the motor nerves, the movements are sudden and violent, the speech hurried, loud, and perhaps incoherent; but the intellectual force knows the source of these symptoms, and can curb them by resolute silence and inaction till the blood again flows at its usual pace; if it does not, the man, for a time, is in a state of mania, but is not the less responsible for having allowed himself to be so.

"Let us suppose another case; the thing is so constantly seen that every one could quote examples of it. A man unaccustomed to self-control becomes occupied by one thought; his ambition has been disappointed, perhaps, or a lawsuit has plagued him, or he has been much employed in some engrossing pursuit. Unable to regulate his thoughts at will, he finds the one which circumstances have made habitual recur uncalled for. An effort would dismiss it, for every one who has studied knows that he has had to dismiss many an intruding thought, and with some effort, too, if he wished to make progress in what he has undertaken; but this individual has never been accustomed to make any such effort, and he knows not how to free himself from the subject which thus haunts him. If it be an unpleasant one, he is wearied and worn by it; but every day that it is not driven off, it assumes a greater power, for the part of the brain thus brought into action is now by habit rendered more fit for use than any other: he has not resolution enough to free himself from his tormentor by a determined application to something else which would require all his attention; he sits brooding over it, and, when life has thus become irksome, he strives to terminate his discomfort by suicide; yet here is no structural disease, and, if the man could be persuaded to exert himself, he might be sane. I will give an instance. The master of a parish workhouse, about thirty years of age, was subjected frequently to groundless suspicions of peculation. Being naturally a taciturn, low-spirited man, these false accusations, which involved his character, and consequently the maintenance of his family, preyed upon his mind, and a profound melancholy was the result, attended by the usual symptomatic derangement of the digestive functions, and a constant apprehension that he had done something wrong, he did not know what. No assurance on the part of those who knew and esteemed him had any effect, and finally, after some months of melancholy, he attempted to destroy himself. He was then removed to St. Luke's Hospital, whence, after a year had elapsed, he was discharged incurable. He was now placed in a private receptacle of the insane, and here suffered all the misery which at that time pauper lunatics were subjected to. He was visited at this place by a benevolent man, who, seeing his state, immediately ordered him to be removed into the gentlemen's apartments, and paid for his maintenance there. In a few months afterwards he was visited by the clergyman of his

parish, who, on conversing with him, considered him sane. The man begged to be allowed to rejoin his wife and family, and the rector, after many difficulties and some threats to the parish authorities, succeeded in setting him free. The man from that time was able to maintain his family by his trade of shoemaking, for, if ever a fit of melancholy came over him, a threat from his wife that he should be sent back to the mad-house was sufficient to engage him to make an effort to resume his cheerfulness; and he remained to old age a sane man. Here the insanity had been merely *inefficiency of the intellectual force.* Placed in a situation of comparative ease, his mind had become calm; the wish to return to his wife and family, and the hope of it, kept up by the visits of benevolent friends, did the rest; for, be it observed, during the whole time he never felt himself abandoned. The poor and the uneducated are the classes which most usually suffer from the *inefficiency* of the intellectual force; it is among the higher ranks usually that its *misdirection* is a source of insanity. Among these, more distant objects of pursuit keep the thoughts longer upon the stretch towards one point; the organs of mechanical memory are strengthened, nay, even strained by the habit of learning much by rote, while the constant supply of learning ready-made leaves no necessity for the more laborious processes of reasoning and comparison. Hence we not unfrequently find an elegant scholar, who can readily quote the words and opinions of others, unable himself to carry on a course of close argument, or to *prove* the truth of what he advances. Whoever has moved in society knows that it is rare to meet with any one who can command his thoughts in conversation frequently to reject all that is not relevant to the subject, so as to keep on the chain of reasoning unbroken.[1]

§ 762. "When the mind is thus exercised in remembering the opinions of others, thus unaccustomed accurately to examine its own, what wonder is it if it should become prepossessed with some irrational notion which cannot be removed by reasoning, because the individual man in his healthiest state has never chosen so to exercise his mind, or if, when a delusion of sense occurs, he should choose rather to act upon it as truth, than to examine into the grounds he has for believing it to be such? It is a melancholy

[1] Ibid.

fact that a great number of mankind are in this state as regards the faculties most requisite to self-control, and depend far more on the accident of good health than the exertion of their own intellectual power for their sanity. I have heard of more than one instance of *hard livers*, as they were termed, who probably, in consequence of a slight affection of the brain from the unnatural stimulus of wine long kept up, became possessed with an opinion that they were slighted by one or more of their friends, and, resisting all reasoning on the subject, ended by destroying themselves. Yet they were rational on other matters of importance, and therefore it is to be concluded that, even on this point, they were capable of being rational also, had they chosen to make the exertion. It is recorded of Henri of Bourbon, son of the great Condé, that at times he imagined himself transformed into a dog, and would then bark violently. Once this notion seized him while in the king's presence; he then felt it needful for him to control himself, and he did so; for, though he turned to the window, and made grimaces as if barking, he made no noise. Had the king's eye been upon him, it is probable that he would have avoided the grimaces also."[1]

"The indulgence of violent emotions," observes Dr. Connolly, "is singularly detrimental to the human understanding, and it is to be presumed that the unmeasured emotions of insanity are sometimes perpetuated in consequence of the disorder of brain originally induced by their violence. A man is at first only irritable, but gives way to his irritability. Whatever temporarily interferes with any bodily or mental function reproduces the disposition to be irritated, and circumstances are never wanting to act upon this disposition till it becomes a disease. The state of the brain, or part of the brain, which is produced whenever the feeling of irritation is renewed, is more easily induced at each renewal, and concurs with the moral habit to bring on the paroxysm on every slight occasion—other vehement emotions and passions affect the same disorders of the mind."[2]

[1] Ibid. See *supra*, §§ 115, 188, 403. [2] Ibid. See Dr. Hack Tuke's Influence of Mind on the Body.

II. PREVENTION.

§ 763. An eminent American physician tells us, that "no argument should weigh, for a moment, with a court of justice, in favor of liberating such an individual (one subject to homicidal mania). The fact that life has been taken should overbalance all motives to send such person into society again, while the delusions and estrangements of insanity continue; and, we add, not until months, if not years, of peace and freedom from excitement should have confirmed their entire release from this dangerous form of disease." "We recently attended," says the same authority, "an interesting trial on a subject of this nature in a neighboring county in this state. An habitually peaceful and worthy man was indicted for the most shocking murder of his wife with an axe, and a horrible attempt upon the lives of his children with the same weapon. The facts were not denied, and his only defence was that of insanity. He was acquitted, principally upon our testimony as to the fact of his being insane at the time the murder was committed, of which we have not the slightest doubt; but our astonishment was only exceeded by our alarm, when subsequently informed that bail had been admitted, and this afflicted but truly dangerous man was permitted to go at large. This ought not to be so. Science and humanity may interpose for the life of the homicide, but society should ever be protected from the effects of his dreadful disease. The lunatic asylum is his proper place; and it should be duly prepared for his reception and detention."[1]

And also for prevention.

§ 764. The man who, in an insane impulse, kills one man, is more than likely, under the same impulse, to kill another. And, indeed, the several facts of moral mania imply a chronic tendency to the particular crime. This was agreed on all sides in Hadfield's case, where the point was first mooted. "For his own sake," said Lord Kenyon, "and for the sake of society at large, he must not be discharged, for this is a case which concerns every man of every station, from the king upon the throne to the beggar at the gate; people of both sexes and all ages may, in an unfortunate frantic hour, fall a sacrifice to this man, who is not under the guidance of sound reason; and therefore it is absolutely necessary, for the safety

[1] Dr. Woodward, cited in 4 Journal of Psychological Medicine, p. 469.

of society, that he should be properly disposed of, all mercy and humanity being shown to the unfortunate creature; but, for the sake of the community, he must somehow or other be taken care of, with all the attention and all the relief that can be afforded him." Hereupon the counsel for the crown and the counsel for the defendant agreed that the safety of the community required that he should be taken care of. "It is laid down in some books," said the former (Sir John Mitford, afterwards Lord Redesdale), "that, by the common law, the judges of every court are competent to direct the confinement of a person under such circumstances." "That may be, Mr. Attorney-General," interposed Lord Kenyon, "but at present we can only remand him to the confinement he came from; but means will be used to confine him otherwise in a manner much better adapted to his situation." It was then suggested by Mr. Garrow (afterwards a baron of the exchequer) that "it would be for the benefit of posterity if the jury would state in their verdict the grounds upon which they gave it, viz., that they acquit the prisoner of this charge, he appearing to them to have been under the influence of insanity at the time the act was committed. There would then," he added, "be a legal and sufficient reason for his confinement."[1] This recommendation was adopted by the jury, who returned a verdict in these terms. Thus originated the form of verdict now commonly returned in cases of this description.

III. EXAMPLE.

§ 765. The recorded cases are numerous in which the supposed irresponsibility of lunatics has led to the perpetration of crime by the insane. "They cannot hang him," was whispered about in the York Lunatic Asylum, when the firing of York Minster by a supposed lunatic was under consideration; "he is one of ourselves." And one of the most dangerous convicts in the Eastern Penitentiary—one laboring under homicidal mania in its most inveterate shape—was constantly expressing his disappointment at finding that, notwithstanding his *acquittal* on the

And also for example.

[1] Howell's State Trials, vol. xxvii. p. 1354 *et seq.* Suggestions for the future Provision of Criminal Lunatics, by W. Charles Hood, M.D., London, 1854, pp. 16, 17. See an article in 35 Am. Journ. Ins. p. 182, on Insane Patients and their Legal Relations.

ground of insanity, he was to be continued in prison. He had, in fact, supposed himself privileged by his disease to commit this particular crime.[1] And even taking the strongest case—that of the man who is possessed by a homicidal mania which equals in intensity the passion of particular classes of dogs for sheep's blood—we will have strong ground to believe that such an instinct can be tutored. Monomanias, in fact, are epidemics, and spread precisely to the degree in which they are invested with sentimental celebrity. The Leipsic "Mädchen-Schänder," who, when charged with gratifying a morbid sexual impulse by striking lancets in the arms of such young girls as he might meet in a crowded street, never exercised this propensity except when it was likely it would be undetected. Shame and the fear of punishment restrained him thus far; but it was quite otherwise when he became the object of a sentimental curiosity, which made him during his trial and imprisonment the object of conspicuous attention. The monomania became an epidemic, and would have continued so had not an ignominious punishment been affixed.[2]

IV. REFORM.[3]

And so for reform.

§ 766. To permit a monomaniac to go at large will be to give fuel to his disease, as well as to supply it with victims—

[1] In reference to this case I have the following note from Mr. David Paul Brown, who was counsel for the person mentioned:—

"You refer, as I suppose, to the case of Wiley Williams, who shot Dr. Kirkbride. I have some knowledge of that case, tending clearly to show, in your language, that 'the recorded cases are numerous in which the supposed irresponsibility of lunatics has led to the perpetration of crime by the insane.'.

"Shortly before Williams shot Dr. Kirkbride, I received a letter from the lunatic, in which he complained of his sufferings during several months of confinement at the asylum, expressed his delight at his escape, and desired to know what redress he could obtain for the injuries he had unjustly sustained. In conclusion, he stated that if the law did not furnish redress, he would be his own avenger. 'If,' says he, 'I was not insane when I was placed in the asylum, those who put or those who kept me there deserve death for their cruelty; and if I was insane, then, if I kill them, my insanity will exempt me from the consequences of crime.'"

[2] See articles by Dr. J. G. Fisher, 25 Am. Journ. Ins. 241, and by Dr. D. S. S. Conant, vol. 2, Trans. N. Y. Ac. of Med. p. 269.

[3] On this topic the reader is referred to the excellent and careful series of Reports of the Eastern Penitentiary

"Mobilitate viget,
Viresque acquiret eundo."

And to nothing does this apply with greater force than that exaggerated state of the moral system which has just been discussed. If the indulgence in passion, even in a healthy mind, tends, as has been just shown, to derangement, it will readily be seen that no recovery can be effected while the patient is permitted to run at large, exposed to all the irritating influences of unguarded society, and encouraged by his very irresponsibility in a career of lawless vice.

§ 767. Dr. Mayo thus well illustrates the awkward position of insane criminals under the present administration of the law: "It must be confessed that the conditional responsibility which the law, and, as I think, the reason, of the case attributes to the insane is not easily applicable in practice, either under lucid intervals, or under such other phases of the insane state as might seem to justify it. The law will remain a dead letter, or will be continually ignored by the sympathies of judges, juries, and, I may add, of medical witnesses, unless some practical distinction can be arranged which may enable the responsible insane to undergo some lower degree of punishment than that inflicted on similar delinquents being of sound mind. The position of many such persons under capital charges is at present anomalous. They are acquitted in defiance of the law, as laid down by the judges respecting M'Naughten's case, because the punishment at present appertaining to the offence would be too severe; and then, instead of being consigned to confinement in a jail, as a secondary punishment, they are consigned to it in an asylum as a place simply of detention. This becomes a scene of severe virtual punishment to some of them, of gratification to vanity and idleness to others; those, meanwhile, to whom it is a grievance, as they do not regard it in the light of a punishment, derive from it none of the preventive effects of punishment or future conduct, while the public, for the same reason, find it equally unproductive of good, as an example to persons of actually diseased

of Pennsylvania, published in Philadelphia, to which it is impossible to make fuller references. Attention may be specially called to the reports of the Physicians and Moral Instructors. See also The State of Prisons, etc., by E. C. Wines, LL.D., Cambridge, 1880.

mind, or to that large class of other persons who are drifting into disease under uncontrolled eccentricity."[1]

§ 768. It is impossible to carry out the proper disciplinary and remedial measures in a penitentiary common to the sane and insane. "I am satisfied of the fact," says Dr. Hood, "that criminal lunatics are more difficult to manage than other lunatics; there is more irritability of temper and general restlessness about them; they are cognizant of the offences they have committed, and, being under the impression that they will never recover their liberty, they are less disposed to be contented or happy. They are also conscious that they are separated into and form a distinct class of patients, and this very circumstance establishes a species of fraternity among them; for they are in constant communication with each other, and their curiosity is naturally excited to ascertain the circumstances connected with every new arrival. They thus soon become acquainted with each other's history, which is often the cause of much quarrelling and mutual recrimination; the better class of patients are unhappy at being associated with the inferior order—criminals whose manners and language are habitually of the most revolting description. Hence I conclude that the fundamental principle upon which we should proceed, in providing for the safe custody, maintenance, and medical care of our criminal lunatics, should be that of establishing a certain classification among them, founded upon the degrees or nature of the crimes which they may have committed. This principle conceded, we have then to consider the expediency or inexpediency of organizing a state lunatic asylum for their common reception; the possibility or impossibility of each county providing adequate accommodation in existing asylums for its own criminal lunatics; and whether arrangements might not be made in prisons, and houses of correction, for the medical treatment of such prisoners as may, while undergoing imprisonment or penal servitude, become insane."[2]

§ 769. On the other hand, the confinement of an insane criminal in an ordinary lunatic asylum is beset with still greater difficulties. "It is," says Dr. Hood, "not only annoying to other patients, but

[1] Mayo on Medical Testimony in Lunacy, pp. 50–52.

[2] Suggestions for the future provision of Criminal Lunatics, by W. Charles Hood, M.D. London, 1854, pp. 28, 29.

greatly disturbs the ordinary discipline of the establishment; for, be it observed, lunatics, whether criminal or non-criminal, are capable of some degree of reasoning; and their conscious incapacity of enjoying this faculty to its full extent often recoils painfully upon their feelings, and becomes, in itself, a source of irritation. In providing, indeed, for the safe custody and the management of the insane of all classes, we should proceed upon the same principles as if we were legislating for professedly sane persons; because the mind is never totally eclipsed, there is always some lingering ray of light which the intact reflection may seize upon with instinctive truthfulness."[1]

V. WHY OUR PRESENT SYSTEM SHOULD BE REMODELLED.

§ 770. If the views taken in the preceding sections be sound; if, in the first place, there are inherent difficulties in the way of making insanity a ground of defence on the trial of a man, who, on this hypothesis, is psychologically incapable of either tendering or preparing any such issue;[2] if, in the second place, we must recog-

[1] Ibid. pp. 27, 28. See The State of Prisons, etc., by E. C. Wines, LL.D., pp. 63, 172, 335. As to insanity originating in the discipline, p. 447.

[2] The absurdity of our present practice, in making insanity a personal defence, to be taken or rejected by the alleged lunatic in the exercise of a volition which the very nature of the defence supposes him incapable of exercising, is fully exhibited in State *v.* Patten, 10 La. Ann. 299 (1855, see R. *v.* Pearce, 7 C. & P. 667).

"The sanity or insanity of the prisoner, said the court, is a matter of fact; the admissibility of evidence to establish his insanity, under the circumstances detailed in the bill of exceptions, is a matter of law, and the only matter which the constitution authorizes this tribunal to decide.

"The case is so extraordinary in its circumstances that we are left without the aid of precedents.

"In support of the ruling of the district judge, it has been urged that every man is presumed to be sane until the contrary appears, and that a person on trial for an alleged offence has a constitutional right to discharge his counsel at any moment, to repudiate their action on the spot, and to be heard by himself; hence the inference is deduced that the judge could not have admitted the evidence, against the protest of the prisoner, without reversing the ordinary presumption, and presuming insanity.

"In criminal trials, it is important to keep ever in mind the distinction between law and fact, between the functions of a judge and those of a jury.

"It was for the jury, and the jury alone, to determine whether there was insanity or not, after hearing the evidence and the instructions of the court as to the principles of law applicable to the case.

"By receiving the proffered evidence

nize sanity and insanity as pressing into each other gradually at a line that cannot be judicially defined, each being capable of various

for what it might be worth, the judge would have decided no question of fact; he would merely have told the jury, 'the law permits you to hear and weigh this evidence; whether it proves anything it is for you to say.'

"By rejecting it, he deprived the jury of some of the means of arriving at an enlightened conclusion upon a vital point peculiarly within their province, and in effect decided himself, and without the aid of all the evidence within his reach, that the prisoner was sane.

"It is idle to say that the legal presumption, and the prisoner's own declarations, appearance, and conduct on the trial, established his sanity to the satisfaction of both judge and jury; for presumption may be overthrown, declarations may be unfounded, and conduct and appearances may be deceitful; and the prisoner's counsel, sworn officers of the court, with their professional character at stake upon the loyalty of their conduct, alleged that they stood there prepared to prove, by what they deemed clear and irresistible testimony, that the accused was insane at the time of the homicide, long before, and ever since; so that the sole inquiry now is, not whether they or the court were right as to the fact of sanity, upon which we can have no opinion, but whether they should have been allowed to put the testimony they had at hand before the jury, to be weighed with the counter evidence.

"If the prisoner was insane at the time of the trial, as counsel offered to prove, he was incompetent to conduct his own defence unaided, to discharge his counsel, or to waive a right.

"Upon the supposition that the counsel were mistaken in regard to the weight of the evidence they wished to offer, as they may have been, still its introduction could do the prisoner no harm, nor could it estop him from any other defence he might choose to make on his own account; neither could it prejudice the state, for it is to be presumed that the jury would have given the testimony its proper weight; if, on the other hand, the counsel were not mistaken as to the legal effect of this evidence, the consequences of its rejection would be deplorable indeed.

"The overruling necessity of the case seems to demand that, whenever a previous soundness of mind and consequent accountability for his acts are in question, the rule that he may control or discharge his counsel, at pleasure, should be so far relaxed as to permit them to offer evidence on those points, even against his will. Considering, therefore, that it would be more in accordance with sound legal principles, and with the humane spirit which pervades even the criminal law, to allow the rejected testimony to go before the jury, the cause must be remanded for that purpose.

"It was said in argument, on behalf of the state, that the alleged insanity was, at most, but a monomania upon another topic, which could not exempt the prisoner from responsibility for the homicide.

"The judge will instruct the jury in regard to the principles of law which govern this subject, when all the facts shall have been heard. At present, the discussion is premature.

"It is therefore ordered, adjudged, and decreed that the judgment of the

degrees ;[1] if, in the third place, it be right that the present system of confinement of insane criminals be remodelled,—then it will become necessary for those to whom the work of legislation is committed to amend the law so as to require the question of insanity to be determined by a competent tribunal *after* a conviction of the fact of guilt. For the following undeniable evils result from the present system :—

a. A tribunal of at least but secondary competency is charged with the determination of the most difficult and yet most momentous question to which human observation can be applied.[2]

b. A subject is introduced into the question of guilt or innocence, as to which no fixed judicial rules can be laid down, and which really concerns only the character and the extent of punishment.

c. We confound by this process the *sane* convict ; the *malignant insane* convict, who requires discipline and is in some degree morally responsible ; the *innocent insane* convict ;[3] and the *lunatic*, who is in confinement but is not charged with crime : for all of whom

court below be reversed, the verdict of the jury set aside, and the cause remanded for a new trial according to law."

[1] See *supra*, §§ 40–66.

[2] Dr. Hood justly remarks : "All human tribunals are fallible, and how, when this plea of insanity is raised, can we unvail the mind of the accused, and determine where responsibility ends and irresponsibility begins ? We may appreciate outward and visible signs, but we have no *mentometer* (if I may be allowed to coin a word) which will indicate the thoughts that may be passing through the mind. In medical jurisprudence the diagnosis between sanity and insanity is, in many cases, infinitely difficult ; and it is upon this account that specialists in this branch of our profession so often come into collision with members of the bar, and draw down upon themselves occasionally animadversions from the judges on the bench. There would be no difference of opinion between the two learned professions if we could arrive at any fixed principles by which we could explain the silent operations of the mind ; but this, so far as insanity is concerned, is as impossible in law as it is in medicine. We may adjudicate upon the overt act, but the motive which dictated it will very often elude the most searching examination. But this happens continually in sane as well as in insane life."—*Suggestions for the future Provision of Criminal Lunatics*, by W. C. Hood, M.D. London, 1854.

And we may add to this the testimony of a great poet on a kindred point :—

"May it please your Excellency, your thief looks
Exactly like the rest, or rather better ;
'Tis only at the bar *or in the dungeon*
That wise men know your felon by his features."

[3] See as to distinction between these, *ante*, §§ 185–200.

there is in some jurisdictions but *one* common method of discipline provided, viz., that of the penitentiary; in others, but *two*, that of the penitentiary and of the ordinary lunatic asylum. The result of this is acquittals in some cases where there should be convictions, convictions in other cases where there should be acquittals, and in almost all cases an erroneous system of punishment.

The remedy for these difficulties is one to which we must come sooner or later, and for which the common law has been from the beginning always striving, and yet losing from almost its very grasp. It is to confine the inquiry before the court and jury to the mere *factum* of the commission of the offence; reserving the question of treatment to be determined by a special commission of experts, to be appointed for the purpose of examining convicts alleged to be insane. The proposition to be put by the court to the jury, under such circumstances, is not, "Was the defendant capable of judging between right and wrong?" a proposition which no jury can determine, but, "Did he," as a matter of fact, "commit the specific act charged?" For whether he committed it as sane or insane, the result is, if the offence in point of law is indictable, that the safety of society requires that he should be placed in seclusion for such a period as will promote the joint ends of personal reformation and the preservation of the well-being of the community at large. If he be guilty without the palliation of mental infirmity, certainly the severest penal code—with the single qualification of cases of murder in the first degree—can ask nothing more than this. If, on the other hand, he was at the time laboring under mental derangement, in no other way can the extent of his responsibility be accurately determined, and the proper degree of discipline adjusted. For this great question of sanity or insanity can really be only determined by those to whose daily and hourly care the convict is committed, and who have thus full opportunity of inquiring into his antecedent as well as his present condition. "Thus," to adopt the language of an intelligent commentator,[1] "except as regards the curative course to be adopted, on our view of the case, the subtle line of distinction which there have been so many abortive attempts to draw, between criminal and non-criminal lunatics, is of no practical importance, and the unavailing search, unless as a matter of metaphysical

[1] 21 London Law Review, 364.

speculation, may be abandoned as unnecessary. In either case, the person concerned, whether called a lunatic, a criminal lunatic, or an ordinary criminal, should be so placed as to put it out of his power to inflict further injury, and to afford the most likely means for his cure." And thus, also, not only will the sanctions of human life and property be protected from the recurrence of those monstrous acquittals, by which, under the plea of insanity, the most dangerous criminals are suffered to run at large, but the interests of humanity will be subserved by a proper discipline, as well as a just classification, of those whose accountability is diminished or destroyed.[1]

[1] See *supra*, § 200. "I may be asked what principle I would propound for the guidance of courts of law in these cases. I cannot but repeat what I have already declared to be my conviction, that, in *every criminal case where the question of responsibility arises in the course of judicial inquiry*, IF IT BE POSSIBLE TO ESTABLISH ANY DEGREE OF POSITIVE INSANITY, IT SHOULD ALWAYS BE VIEWED AS A VALID PLEA FOR A CONSIDERABLE MITIGATION OF PUNISHMENT, AND AS PRIMA FACIE EVIDENCE IN FAVOR OF THE PRISONER; AND IN NO CASE WHERE INSANITY CLEARLY EXISTS (WITHOUT REGARD TO ITS NATURE AND AMOUNT) OUGHT THE EXTREME PENALTY OF THE LAW TO BE INFLICTED.

"What, I may be asked, is my test of insanity? I have none. I know of no unerring, infallible, and safe rule or standard, applicable to all cases. The only logical and philosophic mode of procedure in doubtful cases of mental alienation, is to compare the mind of the lunatic at the period of his suspected insanity with its prior natural and healthy condition: in other words, to consider the intellect in relation to itself, and to no artificial *à priori* test. Each individual case must be viewed in its own relations. It is clear that such is the opinion of the judges, notwithstanding they maintained as a test of responsibility a knowledge of right and wrong. Can any other conclusion be drawn from the language used by the judges when propounding in the house of lords their view of insanity in connection with crime? 'The facts,' they say, 'of each particular case must of necessity present themselves with *endless variety and with every shade of difference in each case;* and, as it is their duty to declare the law upon each particular case, upon facts proved before them, and after hearing arguments of counsel thereon, they deem it at once *impracticable, and at the same time dangerous to the administration of justice if it were practicable, to attempt to make minute applications of the principles* involved in the answers given by them to the questions proposed.' This is a safe, judicious, and philosophic mode of investigating these painful cases; and, if strictly adhered to, the ends of justice would be secured, and the requirements of science satisfied.

"In considering the question of modified responsibility in connection with these cases of alleged insanity, we should never lose sight of the fact, that, even if a lunatic be fully exonerated and acquitted in consequence of his state of mind, he is doomed to linger out the remainder of his miserable existence in the criminal wards of a public lunatic asylum.

"To talk of a person escaping the

extreme penalty of the law on the plea of insanity, as one being subjected to no kind or degree of *punishment*, is a perfect mockery of truth and perversion of language. Suffer no punishment! He is exposed to the severest pain and torture of body and mind that can be inflicted upon a human creature short of being publicly strangled upon the gallows. If the fact be doubted, let a visit be paid to that dreadful *den* at Bethlehem Hospital—

'*Regions of sorrow, doleful shades, where peace*
And rest can never dwell, hope never come,
That comes to all'—

where the criminal portion of the establishment are confined like wild beasts in an iron cage!

"Much has been said of the deterring effects of capital punishment. I do not doubt its having some effect in preventing crime; but I incline to the opinion that if the real condition of those confined as criminal lunatics was well understood (assuming the insane to be amenable to the fear of punishment), it would act more potently as a deterring agent than any apprehension they might feel at the prospect of a public execution.

"It was the opinion of Beccaria that the impression made by any punishment was in proportion to its *duration*, and not to its *intensity*. 'Our sensibility,' he observes, 'is more readily and permanently affected by slight but reiterated attacks than by a violent but transient affection. For this reason, the putting of an offender to death forms a less effectual check to the commission of crimes than the spectacle of a man kept in a state of confinement, and employed in hard labor, to make some reparation, by his exertions, for the injuries he has inflicted on society.'

"In judicially estimating cases of crime connected with alleged conditions of insanity, it is our duty always to bear in mind, that, if an error be committed on the side of undue severity, it never can be remedied.

"No reparation can be made for so great an injury—for so serious an act of injustice. If a criminal should be unjustly acquitted on the plea of insanity (and I admit such cases have occurred), a degree of injury is undoubtedly done to society, and the confidence in the equitable administration of justice is, to an extent, shaken. But can a judicial mistake like this for one moment be compared with the serious and fatal error of consigning an irresponsible creature to a cruel and ignominious death?

"It is well observed by Bentham that 'the minimum of punishment is more clearly marked than its maximum. What is *too little* is more clearly observed than what is *too much*. What is not sufficient is easily seen; but it is not possible so exactly to distinguish an excess. An approximation only can be obtained. The irregularities in the force of temptation compel the legislator to increase his punishments until they are not merely sufficient to restrain the ordinary desires of men, but also the violence of their desires when unusually excited. The greatest danger lies in an error on the minimum side, because in this case the punishment is inefficacious; but this error is least likely to occur, a slight degree of attention sufficing for its escape; and, when it does exist, it is, at the same time, clear and manifest, and easy to be remedied. An error on the maximum side, on the contrary, is that to which legislators and men in general are naturally inclined; antipathy, or a want of compassion for individuals who are represented as dangerous and vile, pushes them onward to an undue severity. It is on this side, therefore, that we should take the most precau-

tions, as on this side there has been shown the greatest disposition to err." —*Winslow's Essay on Legal Responsibility*, 15 Am. Journ. of Insanity, p. 191.

See also an interesting essay on Criminal Insane, Insane Transgressors, and Insane Convicts, by Edward Jarvis, M.D., of Dorchester, Mass., in the 13th volume of the Am. Journ. of Insanity, p. 195. See also Chapters on Prisons and Prisoners and the Prevention of Crime, Jos. Kingsmill, M.A. Lond. 1854.

A committee of the New York Senate, consisting of Messrs. Woodin, Fowler, and Pitts, made a special report upon the condition and treatment of the insane of the State, which is printed in the *New York Herald* of March 7, 1882.

"The committee visited the lunatic asylums of the State, and examined as witnesses superintendents of asylums, attendants, trustees, managers, medical experts not connected with asylums, patients confined therein, the State Commissioner in Lunacy, and whoever they thought might be able to throw light on the matters under investigation. They reach conclusions by saying that insanity is a physical disease—one of the nervous system not apart from the human nature, but to be studied and treated as a part of a large family of nervous diseases. It is declared to be most marked and prevalent the higher the grade of civilization, but that its increase is out of all proportion to the increase of population in highly civilized countries. In Great Britain it has been estimated by one of the presidents of the British Psychological Association that if insanity were to increase in England and Wales as it has increased the last forty years, there would be in the year 1912 1,250,000 of insane persons. It was estimated that in 1850 there was in Great Britain about one lunatic to every 1000 persons. According to the very elaborate report of the Lunacy Commissioners of Great Britain in 1880 there was one lunatic in every 357 persons; in England and Wales the year before, one lunatic in every 360 persons, thus showing an increase out of proportion to the population, not only at long intervals, but even from year to year. The statistics of Massachusetts also show an increase of lunacy out of proportion to the population. The committee says it is quite safe to estimate that in New York there are in and out of asylums not far from 13,000 lunatics in a population of only 5,000,000, or about one to every 384 of the population, the proportion not differing essentially from that shown by the statistics of England and Scotland."

The report makes the following points:—

1. Insanity is a nervous disease, to be treated largely under purely medical conditions.

2. It is in a great measure an incident of complex civilization.

3. Its increase is out of proportion to the growth of population.

4. It increases more rapidly among the poor.

5. It has become less and less curable.

6. Special provision should be made for the cases of persons "mildly, moderately insane."

7. Nervous diseases collateral to insanity are largely on the increase.

The report closes with the following:—

"8. In our systematic treatment of the insane in asylums, public and private, and in our supervision of asylums, we are in this state very far behind Great Britain. While there is no county in the world where physi-

cians are more intelligent than here, yet there is no great country that is so far behind in organizing and systematizing the progress that has been made by individuals in appropriate legislation, while our physicians are unsurpassed if not unequalled in scientific attainments and practical skill and in hygienic knowledge in the treatment of nervous diseases, including insanity. We are behind Europe in not having a central supervisory lunacy commission. In England this commission has existed between thirty and forty years, and it has in that time wrought many changes and instituted many valuable reforms in spite of superintendents and officers of asylums who at first were jealous of any interference. The powers of the commissioners are necessarily comprehensive, but they are wielded gently yet firmly, and very successfully. The commission is a guarantee against profligate expenditure. The commissioners are consulted in regard to all constructions, alterations, and improvements in asylum buildings, and in regard to the appointment of officers. Their reports each year give elaborate details in regard to each institution which they are required to visit. They examine the records and registers of asylums, give heed to the letters of patients addressed to them, see that if possible no patients are improperly admitted to asylums or improperly retained in them. Patients, whether kept in public or private asylum, are regularly visited by them. The system of central governmental supervision in Scotland seems to be even better than that of England, in that it is more simple if not more thorough. The first great need of our state is the appointment of a lunacy commission, consisting of three or more persons specially fitted for such an important trust, and when such a commission is appointed and vested with adequate authority by appropriate legislation, every needed reform will gradually be developed, while under the present system, or rather lack of system, they may in the future, as in the past, be retarded to the detriment of taxpayers. The expense of caring for the insane is annually increasing. The state has contributed money enough had it been judiciously expended in construction to have furnished a well appointed asylum for each lunatic in the state, as well as for the estimated increase in the next twenty years. The fault is one that cannot now be remedied, but the future of our state in providing for the cure and treatment of the insane ought to be wholly exempt from the follies of the past. Among those who have given attention to the subject there is entire unanimity that the asylums of the future should be more simple in construction, located upon economical farms, where patients may be employed with profit to the state and immeasurable advantage to themselves—less to gratify the æsthetic taste of asylum officials, and more for the comfort and recovery of the insane. In Europe this reform is already begun. The chronic and incurable insane should as far as possible be kept apart from the acute insane. The increase of insanity has been to a great degree among the chronic insane. Patients of that class do not need the expensive accommodations and appliances of a curative hospital. It is well known that if the insane who are sent to asylums do not recover during the first year of treatment, there is little ground for hope of recovery. They pass into the class of chronic insane. Such institutions, for instance, as the Island Hospital, of New York city, have no excuse for their existence.

The chronic insane in those institutions could be and should be kept economically and far more comfortably upon a farm or farms, more or less remote from the city, where they could in part at least support themselves by their labor. Too little heed is given to the value of labor as a therapeutic agent in our asylums generally. In the best asylums of Europe labor is the rule—non-labor the exception. Of 541 pauper patients in the Royal Edinburg Asylum 28 women and 18 men only were prevented by their condition from being profitably employed. In the West Home of the Royal Edinburgh Asylum there were 347 private and pauper male patients. Of these 254 were profitably employed—184 in outdoor work. Employment is not only profitable but healthful. In the Willard Asylum every patient, male and female, in a condition to labor is systematically employed in some way; if not always profitable, in a pecuniary sense, yet never without great advantage to the patients. On these points the best authorities are everywhere agreed, viz., that labor is an invaluable aid in doing away with mechanical restraint and also with the use of narcotic remedies. If for no other object than the substantial abolition of mechanical and chemical restraint of the insane, humanity demands that our asylum authorities make employment of patients one of the most prominent and distinguishing features in their administration.

"*A humane method demanded.*—The medical officers in many of our asylums and the attendants also under their influence show a disposition to resist the introduction of changes and improvements in asylum management which observation and experience in other countries have demonstrated to be invaluable in the treatment of the insane. We do not doubt that our superintendents as a class are men of ability, conscience, and humanity, but the pertinacity with which the most of them resist the introduction of methods which distinguish the asylums of England, Scotland, and Germany above all others is not easily accounted for. The humane advance of Pinel in removing chains and other cruel instruments of restraint from the insane was made in spite of earnest protests of conscientious men. So, at a later day, when Connolly ventured a step further and favored a practical, absolute non-restraint, English alienists resisted vigorously the methods of that great reformer and predicted the most disastrous results and a record in the management of the insane over which humanity would blush. But Connolly's courage was equal to his convictions, and non-restraint became the rule in English asylums, and his humane example has not ceased to have its influence in other countries. In Scotland every appearance of restraint is being removed—doors are unlocked, windows are not disfigured by massive iron bars, almost absolute freedom is given to inmates.

"*Value of state supervision.*—We do not, of course, recommend any legislation which shall determine methods of care and treatment, but it is our confident belief that central state supervision will aid much in getting the officers and attendants out of the rut which long-continued service and habit have formed, and, what is of prime importance, will tend to allay the rapidly growing distrust among the people by affording just assurance that those who are so unfortunate as to lose their reason are treated economically, scientifically, and humanely. It has been stated by competent persons and is believed that at least $2,000,000

could have been saved to the state in the last twenty years had there been intelligent and economical state supervision over building of asylums, and that without any sacrifice of the comfort of the patients. The committee think it is unwise to authorize the establishment of small local asylums for the care of the insane, as in almost every case it must happen that what the taxpayer saves in expense is more than lost to the patient in a lower standard of care.

"The commission—the creation of which we recommend—should be given ample powers to look after the interests of the state in the matter of expenditure and to protect the patient in the matter of physical care, with full powers to redress all grievances and remedy whatever wrong they may discover."

See, in this connection, an interesting and able pamphlet entitled Some Remarks on Crime-Cause, by the Hon. Richard Vaux (Phila. 1879), originally printed in the Report of the Secretary of Internal Affairs of Pennsylvania for 1875–6.

CHAPTER XI.

PSYCHICAL INDICATIONS.

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§ 771. Mr. Rawlinson, as his motto to the Bampton Lectures of 1859, takes the following from Aristotle:—

Τῷ μὲν γὰρ ἀληθεῖ πάντα συνᾴδει τὰ ὑπάρχοντα, τῷ δε ψευδεῖ ταχὺ διαφανει τἀληθές.

(FOR WITH THE TRUE ALL THINGS THAT EXIST ARE IN HARMONY; BUT WITH THE FALSE THE TRUE AT ONCE DISAGREES.)

Importance of psychical indications.

This conflict between the true and the false arises in all cases where guilt is attempted to be screened by human contrivance. The mind involuntarily becomes its own prosecutor. It drops at each point evidence to prove its guilt. Each statement that it makes—each subterfuge to which it resorts—each pretext it suggests—is a witness that it prepares and qualifies for admission on trial. In this, and in the universality of the psychological truth that guilt cannot keep its counsel, we may find an attribute of divine justice by which crime is made involuntarily its own avenger. Man cannot conceal the topic of a great crime, either anticipated or committed. It sometimes leaps out of him convulsively in dreams; sometimes a false cunning leads him to talk about it to know what suspicions may be afloat; sometimes that sort of madness which impels people to dash themselves from a high tower forces him to the disclosure. Even his silence tells against him; and, when it does not, the tremor of the body supplies the place of the tremor of the mind. Nor can he keep peace with his associates. There is a disruptive power in consciousness of common guilt, which produces a hatred so demonstrative, that, if it does not supply the proof, it attracts the suspicion of a great wrong having been done.

I. PRIOR TO CRIME.

1. *Preparations.*[1]

§ 773. In the preparation for acts of guilt the most astute leave unguarded points. Poison has to be obtained somewhere. For domestic purposes it might be boldly purchased; but the poisoner, in a vast majority of cases, is impelled to a more circuitous course. He buys it to kill vermin, and then gives a false excuse—as in a case where the prisoner pointed to a mouse which he said was killed by the poison, when in fact, it turned out that the mouse was not so killed. He places a loaded pistol on his person on a pretext which he takes care to announce, but which turns out in like manner to be false. There is, in almost every kind of crime, a swelling of the upper soil which shows the subterranean road which the criminal travelled. It would seem as if it were a germinal element of guilt that it cannot work without such memorials. Adroit management may lure witnesses away from the intended spot—the greatest caution may be shown in the purchasing, the collecting, or the fashioning of instruments—but still the traces remain, ready to increase the presumption, if not the positive material for conviction. Inference from.

§ 774. At the Shrewsbury races, in November, 1856, appeared two young men, each of whom had large stakes involved—in each case those of life and death. Polestar, one of the horses entered, belonged to John Parsons Cook; a sporting character and spendthrift, and not much besides. He had inherited a considerable estate, but a large portion of this had gone in dissipation, and now, the result of the race was to decide whether the remnant was to be doubled or destroyed. Watching him pretty closely, though with an off-hand familiarity which required an experienced eye to penetrate, was William Palmer, a man several years his senior, whose fortune, which had also been considerable, was now entirely gone. The "Chicken" was Palmer's horse, and on this he had ventured enormous bets. But he had a double game. Ruin, it is true, was imminent, but there was a method of escape. He was a medical man, and he had discovered the fatal properties of strychnine—how that it produced a disease scarcely to be dis- Palmer's case.

[1] As to the admissibility of proof of this class, see Wh. Cr. Ev. 8th ed. § 753.

tinguished from lockjaw—how it could be administered without exciting the victim's attention—what was the minimum dose necessary to take life, and how, when this dose alone was administered, the poison was dispersed, leaving no traces behind. He had a book in which these points were stated, and to make himself certain, he not only turned down the book at the place, but made a memorandum giving the substance in his note-book. He was a man of the world, and he made himself, without appearing to do so, thoroughly master not only of Cook's confidence, but of his secrets. He knew that Cook had a disease which produced sores on the tongue which might be considered, if talked about in the right light, as the cause of lockjaw, so he proceeded to tell about them in this light. He knew how to imitate hand-writing. So he wrote a paper by which Cook acknowledged himself his debtor in a sum sufficient to absorb all Cook's effects. "Polestar" won and "Chicken" was beaten. Palmer, in his careless, sporting way, borrowed Cook's winnings to pay his losses. Then everything was ready to poison Cook, and the work was done with complete coolness and success. A little preliminary sickness was induced, during which nothing could be more kind and yet less officious than Palmer's attentions. It is true the strychnine had to be bought, but this was done in a circuitous way, and under a false color. Then it had to be administered, but two medical men, of undoubted probity, were called in, and, as they recommended pills, it was very easy to substitute pills of strychnine for pills of rhubard. So Cook was killed, and this so subtly, that the attending physician gave a certificate of apoplexy. As to the *post-mortem*, Palmer knew it would not amount to much, nor did it. No strychnine was discovered, but here the nerves of Palmer gave way. He showed an undue fidgetiness while the examinations were going on. He tried to tamper with the vessels in which the parts to be examined were placed. Then, also, the note he produced to show Cook's indebtedness to him was suspected; and then Cook's betting book could not be found. This led to Palmer's arrest. The first medical authorities in England proved that Cook's death came from strychnine and nothing else. The apothecaries from whom the strychnine was bought, attracted by the discoveries, identified Palmer. In a dark passage he had been seen to drop something into a glass for the sick man, but the passage was not so dark but that he was observed. Then his note-book turned up, showing how

acquainted he was with the poison. And upon these facts, skilful as he was, and completely as he had covered up his guilt from the superficial eye, he was convicted and executed.

2. *Intimations.*[1]

§ 775. Intimations are to be tested by the character of the party from whom they emanate. In the present connection, they may be divided into three classes.

Direct belong to ruder states of society.

Direct intimations are the less frequent. The coarse old feudal baron, over whom there was no law which would interfere to make a threat defeat itself—whose importance depended upon the emphasis with which he pursued his enemies—to whose temper deceit was intolerable—threatened dashingly, and performed implacably. So the Scotch clansman followed his hereditary vengeance until the last of the tribe he hated was extinguished.

Now in these cases there was neither parsimony nor insincerity in the threat, and no reserve in the execution. What was said was meant. It is only, however, in the rudest and most lawless states of society that we now find this phase. In a community where there is a justice of the peace, to threaten life is followed by a binding over to keep the peace; and such a threat, therefore, is rarely heard except as a bluster. Civilization, it is true, has not extracted the venom from homicide, but it has muffled its rattle.

There are cases, however, where the rattle is still heard. A purpose of vengeance may be whispered in a friend's ear. Among men over whom there is no law, in the mountain slopes or prairie sweeps to which no jurisdiction except that of the vigilance committee has reached—among the hunters of the wilderness who have preceded law, or the wreckers of the coast who have defied it, or the outcasts of the city who have been rejected by it—in those cases of domestic outrage where social usage seems to permit vengeance being taken into private hands—here threats may be the precursor of deeds. Desperation, also, gives out the same warning; and in such cases the warning uttered is of real consequence.

[1] See as to admissibility of evidence of this class, Wh. Cr. Ev. 8th ed. §§ 756 *et seq.*

Then, again, a threat which may be meant merely as bravado may afterwards become a real and desperate purpose. Provocation—opportunity—the desire to save the character from the imputation of mere bullying—may stiffen the attempt to frighten into an attempt to destroy. Or, again, a settled animosity may be produced, which may lead, though circuitously, to secret mischief.

Taking out these exceptions, however, and assuming the case to be that of a man of ordinary prudence, where there is no proved settled purpose of revenge, and in a community where the usual restraints of the law are applied, it becomes unsafe to connect threats previously uttered by such a party with a recent homicide. "The tendency of such a prediction," says Mr. Bentham, "is to obstruct its own accomplishment. By threatening a man, you put him upon his guard, and force him to have recourse to such means of protection as the force of the law, or any extrajudicial powers which he may have at command, may be capable of affording him." In the case last put, it is not likely that the one who really accomplished a deed which would lead to condign punishment was the one who publicly threatened it.

The weight to be attached to such threats depends upon the state of society at the time. In a rude and barbarous community the assailants who intend violence are apt to threaten it. In a civilized community, where justice is efficiently administered, the intention to perform deeds of violence is concealed.

Indirect the more significant in civilized life.

§ 776. In high states of civilization, where direct threats are not often heard, the preparations for a crime are much more likely to be found in ambuscades likely to inveigle the intended victim into a position in which he will more readily fall a prey. When the massacres of St. Bartholomew were planned, the Huguenot chiefs were invited to Paris on the pretence of the wedding between Henry of Navarre and Margaret of Valois. "This politeness of the Italian Queen is very suspicious," said the more wary of them; "she kisses whom she would betray." But they went, were caressed, and were massacred.

The Admiral Coligny had been wounded by an assassin under the pay of the Duke of Guise. He lay helpless on his sick-bed, when Charles IX., then a boy of only nineteen, but thoroughly

schooled by his malign mother, was announced. The Huguenots were thoroughly aroused by the attack on the admiral. The preparations for crushing them, however, were not then complete. It was necessary that they should be quieted and kept together. So Charles entered into the admiral's chamber, and, throwing his arms around the aged warrior, said, "Father, *you* received the wounds, but *I* the sorrow." Two or three nights afterwards, Coligny, hacked and helpless as he was, was torn from his bed and cut to pieces. Then his body was dragged through the streets, and at last his trunk was kicked about like a foot-ball in the presence and for the diversion of the young king, who had shortly before embraced it. "Had it been the mother," said the survivors, "we would have had suspicion; but it was only the boy." Here was the Medicean mask—the very luxury of artifice in which Catharine of Medicis enveloped herself when about to commit a crime; and yet, from its very excess, it was a premonition. So it is that subtle guilt, in the very degree to which its subtlety is refined, gives its own warning, and at all events invokes its own retribution. For the recoil of St. Bartholomew's night destroyed the House of Valois far more effectually than did the massacre of the Huguenots. Charles IX. died only a few years after, of a disease in which nervous horror, if not remorse, was the prime agent, and so did men turn from him, that his body was deserted when on its way to the grave, and was followed to St. Denis by only three private gentlemen. His brother, Henry III., who succeeded him, was the last of his race.

Cowardice may work in the same way, from the fear of being struck back, if a face-to-face blow be attempted. So it was with James I.:—

"Willing to wound, and yet afraid to strike."

When he was rolling the execution of the Earl of Somerset as a sweet morsel in his mouth, he hung about the neck and slabbered over the face of that unfortunate favorite. It is not that he wanted to entrap—Somerset was caught already. Nor did he want to prevent detection, for he afterwards never shrank from the moral consequence of the deed. It was merely because he was physically afraid to face a collision.

§ 777. *Precautionary* intimations are entitled to peculiar weight.[1]

So of precautions.

Of these the following may be taken as illustrations: Captain Donellan was tried in Warwick, in 1781, for poisoning Sir Theodosius Boughton, on whose estates his wife had a reversionary interest. The defendant had no doubt long formed a plan by which the deceased was to be removed. To exclude suspicion, the idea was thrown out long in advance that the latter's health was desperate—that speedy death was certain—that his imprudence was constantly heaping up causes upon causes to produce it.

When Sir Thomas Overbury was in the tower, and when the arrangements for his poisoning, under the direction of the Countess of Somerset, were made, the doctors, whom the countess had in pay, were careful, long before the poison took effect, to announce that the patient was very sick, and, indeed, "past all recovery." It was a trick to prevent surprise.

§ 778. Prophetic intimations, though less rare, may indicate the parties who have been brooding over some projected crime. Those who approach a crime under the stress, either felt or assumed, of a supernatural decree, often move with the pomp worthy of so grand a mission. The muttered forebodings of the fanatic precede the fanatic's blow. The assassinations of John of Leyden, and the assassinations of Joe Smith, were always ushered in by intimations, more or less obscure, that the intended victim had fallen under the divine ban. Nor can we dismiss this as mere hypocrisy. The consciousness, though only partially sincere, of a supernatural impulse, cannot be completely repressed. The Greek tragedians felt this when they made those who meditated, under such an impulse, a deed of blood, bear witness to their awful mission by their dark forebodings of misery to him they would destroy. So it was that Clytemnestra stalked over the stage, relating to the sympathetic chorus the terrors before her eyes and the fate by which she was driven, and so it was that they ejaculated back their admiring horrors. So it was with the first Napoleon, with whom this sense of the supernatural was sometimes master, sometimes creature. He knew how to use it to overreach others; but he knew not how to use it with-

Significance of prophetic intimations.

[1] See Wh. Cr. Ev. 8th ed. §§ 734 *et seq.*

out its sometimes overreaching himself. In the very face of policy he could not always conceal within himself the decrees of destiny with which he supposed himself charged. Thus the death of the Duke d'Enghien was muttered forth by him long before the fatal arrest; and so before sovereign houses ceased to reign came the intimations of this vice-regent of destiny that the decree was about to issue. It was not mere threats—it was not ambuscade—it was the involuntary witness borne against itself by crime acting under the guise of fate.

§ 779. Among the vulgar these intimations are not infrequent. Murderers, especially in the lower walks of life, are frequently found busy for some time previous to the act in throwing out dark hints, spreading rumors, or uttering prophesies relative to the impending fate of their intended victims. It would seem as if the criminal intention could not be kept secret; that it must in some way be let out. Susannah Holroyd was convicted, at the Lancaster assizes of 1816, for the murder of her husband, her son, and the child of another person. About a month before committing the crime, the prisoner told the mother of the child that she had had her fortune read, and that, within six weeks, three funerals would go from her door, namely, that of her husband, her son, and of the child of the person whom she was then addressing. And so, on the trial of Zephon, in Philadelphia, in 1845, it was shown that the prisoner, who was a negro, had got an old fortune-teller in the neighborhood, of great authority among the blacks, to prophesy the death of the deceased.

Superstitious tendency to forewarn.

When there is a family or local superstition, it may be invoked for the same purpose. Thus Miss Blandy, when her preparations for poisoning her father were in progress, threw out references to the supernatural music with which the house was pretended to be pervaded—music which, according to tradition, betokened a death in twelve months.

It is in these several classes of intimations, most of them involuntary, that we find another instance of the self-detective power of guilt.

3. *Overacting.*

Suspiciousness of sudden accessions of friendship.

§ 780. Extraordinary affection is often simulated before a near relative is removed by poisoning. Thus, a husband is reconciled to and lives with his wife whom he intends to dispatch; and a wife, as in Mrs. Chapman's case, becomes singularly demonstrative in her public attentions to her husband. Mary Blandy, at the time her father was writhing under poisons she had herself administered, heaped on him attentions so inappropriate to his condition as to become the subject of suspicion then, and the ingredients of proof afterwards. So industrious declarations of friendliness and fairness not unfrequently are thrown out prior to an assassination. The alleged sudden access of attention by Mary Queen of Scots to Darnley shortly before his murder is one of the points, it will be remembered, urged most strongly against her by Mr. Froude.

II. AT CRIME.

1. *Incoherence.*

Conspicuousness of crime.

§ 781. "Providence," said Mr. Webster, in his speech in Knapp's case, "hath so ordained, and doth so govern things, that those who break the great law of Heaven by shedding man's blood seldom succeed in avoiding discovery. Discovery must come sooner or later. A thousand eyes turn at once to explore every man, every thing, every circumstance, connected with the time and place; a thousand ears catch every whisper; a thousand excited minds intensely dwell on the scene, shedding all their light, and ready to kindle the slightest circumstance into a blaze of discovery."[1]

[1] "The detection of a forgery by the paying-teller of the Bank of the Republic (in 1872) was a remarkable instance of the unconscious dexterity which habit gives. The check appeared to be drawn by a well-known house, and was upon the peculiar form of blank used by that house. A teller's eye learns to connect the usual writing of every dealer with the blank commonly used by him — its shape, color, and even texture—so that the thing becomes a unity in his mind, or rather to his perception. The smallest variation, therefore, makes a discord, and induces scrutiny. In this case, they cannot tell *what* it was that led him to examine the signature, which, although it proved a forgery, was so closely imitated, that a careful comparison with the genuine hardly justified suspicion. But he remem-

§ 782. While there is on the one hand this concentration of observation, there is an almost unlimited multiplication of points to be observed. The criminal stands in the position of a country which has a coast line of indefinite extent, compelled to meet an adversary whose powerful and vigilant fleet commands the seas. There is this distinction, however, between the cases. The coast line may be broken without ruin, but not so the line of a criminal's defence. A single false position in his plans—such, for instance, as the omission to wash off a blood-stain—the leaving a letter or a paper disclosing identity, in the room—the forgetting that snow was on the ground, by which footprints could be tracked—over-industry in setting up a sham defence—sudden forgetfulness in answering to a real and not a feigned name—is destruction. And yet this is the necessity of all who seek to cover up guilt. They are acting a part which, to be perfectly acted, requires perfect skill, perfect composure, perfect foresight, perfect powers of self-transposition. Now we all know how impossible it is for even the most consummate actor to be true to an assumed character for an hour, and this under the tension of the stage. Yet this is required of a criminal constantly, in the lassitude of home, as well as in the excitement of public observation, in his chamber as well as in the court-house.

Impossibility of perfect execution.

§ 783. Of all the great poisoners, the most stealthy and feline,

bered that, as he took the check in hand, the paper seemed a little stiffer than that commonly used by the firm! So slight are the clues, sometimes, that lead to the discovery of crimes.

"Rogues are rarely philosophers, or they would not be rogues. The equilibrium of things, so nicely adjusted to universal fair-dealing, is disturbed by the slightest deviation from right. As, on strings stretched in every direction, a thrill passes to the social limit of the central offending blow, the culprit feels, although he may be unconscious of the feeling, that all unseen powers and intelligences are in league against him. By dint of self-control he may bear an unmoved face; but his soul is alert and suspicious, and a whisper, a look, or a rustle frightens him. No cunning can effectually evade this law; the more artful go a little further, that is all. It is a curious fact, that in its operation the expertest thief-taker in the world is habit—not in great things necessarily, but just as much in little things; not a wise, observing, or thoughtful man's habit, but even more commonly a simple man's habit, often a child's. Something is displaced without ordinary or adequate cause, and the person whose unconscious habit is thus violated looks twice, and the second look proves too much for the secrecy of the crime that broke the slight but charmed thread."

Zwanziger's case.

we have been told, was the widow Zwanziger, known in history by the name of her last husband, the Privy-Councillor Ursinus, of Berlin. Madame de Brinvilliers was an enthusiast, who poisoned with a spread and dignity of circumstances which necessarily invited detection. The widow Zwanziger, on the other hand, slid softly about from house to house poisoning unobtrusively. So quiet and home-like were her attentions to the deceased—so deep and yet so well controlled her grief—so completely her whole deportmemt that of a tender, sober, and yet undemonstrative friend, that when her lover, who began to be tired of her—her husband, of whom she began to be tired—her aunt, whose heir she was—successively sickened and died, she was the last who would have been suspected of having dispatched them. Yet this most experienced, self-disciplined, and wary of poisoners—this actress so consummate that to the end she played the parts of the lady of fashion, and the sentimental and pietistic poetess, with a perfection that showed no flaw—was careless enough, when engaged in such common game as the poisoning, as if merely to keep her hand in, of an ordinary man-servant—to leave the arsenic open in a room where her intended victim, made curious by one or two abortive operations she had attempted on him, scented it out, carried it to a chemist, and established the fact that it was of the same character with the poison by which she had seasoned some prunes she had been giving to him for dessert.

In the same line may be mentioned the case of Mrs. Sherman, hereafter noticed.[1]

Fauntleroy's case.

§ 784. Equally wary and artistic, though in a different line of guilt, was Fauntleroy, perhaps the most complete forger of modern times. He was subtle, reticent, accomplished, and imperturbable. In a long course of years, he perfected a system of forgery, by means of which he obtained the transfer of stocks entered in the bank of England, in the names of various persons, to the amount of £100,000. Such was the thoroughness of the fictitious accounts and false entries by which his forgeries were covered up, that his partners and clerks, as well as the bank, were deceived, and yet, at the very time he was weaving a veil otherwise impenetrable, he took the extraordinary step—a step unaccounta-

[1] *Infra*, § 790.

ble except on the hypothesis of the innate inability of the mind to act out with perfection any fabricated part—of keeping a private diary of his guilt, and executing a paper, signed with his name, and carefully put away among his vouchers, in which he expressly declared that guilt.

§ 785. Richard Crowninshield, of Salem, Massachusetts, was, in 1830, a young man of good family and education. Of dark and reserved deportment, quiet and self-possessed, he united a malignity of heart, which made crime natural and normal to him, with a courage of purpose, a temperance in sensual indulgence, and a sagacity and adroitness in the choice and in the use of means, which made crime easy. His tastes and temperance were such as to cover his tracks with almost impenetrable darkness. "Although he was often spoken of as a dangerous man, his person was known to few, for he never walked the streets by daylight. Among his few associates he was a leader and a despot." Crowninshield's.

Joseph White, a wealthy merchant, eighty-two years of age, was found murdered in his bed, in his mansion house, on the morning of the 7th of April, 1830. His servant man rose that morning at six o'clock, and on going down into the kitchen and opening the shutters of the window, saw that the back window of the east parlor was open, and that a plank was raised to the window from the back yard; he then went into the parlor, but saw no trace of any person having been there. He went to the apartment of the maid-servant, and told her, and then went into Mr. White's chamber by its back door and saw that the door of his chamber leading into the front entry was open. On approaching the bed he found the bedclothes turned down, and Mr. White dead; his countenance pallid, and his night-clothes and bed drenched in blood. He hastened to the neighboring houses to make known the event. He and the maid-servant were the only persons who slept in the house that night, except Mr. White himself, whose niece Mrs. Beckford, his housekeeper, was then absent on a visit to her daughter, at Wenham.

The physician and the coroner's jury, who were called to examine the body, found on it thirteen deep stabs, made as if by a sharp dirk or poniard, and the appearance of a heavy blow on the left temple, which had fractured the skull, but not broken the skin. The body was cold, and appeared to have been lifeless many hours. On examining the apartments of the house, it did not appear that any

valuable articles had been taken, or the house ransacked for them; there was a package of doubloons in an iron chest in his chamber, and costly plate in other apartments, none of which was missing. The first clue obtained to the murder was by the arrest, at New Bedford, of a man named Hatch, who stated, when under examination for another offence, that he had heard Crowninshield mutter intimations of violence towards Mr. White. Soon another thread was found. Mr. White was childless, and left as his legal representative Mrs. Beckford his housekeeper, the only child of a deceased sister, and four nephews and nieces, the children of a deceased brother. He had executed, as was known in the family, a will by which he left by far the larger portion of his estate to Stephen White, one of the few children of the testator's brother, reserving but a small legacy to Mrs. Beckford. A daughter of Mrs. Beckford married Joseph J. Knapp, Jr., who with his brother, John Francis Knapp, were young shipmasters of Salem, of respectable family, the sons of Joseph J. Knapp, also a shipmaster. Shortly after the murder, the father received a letter obscurely intimating that the party writing the letter was possessed of a secret connected with the murder, for the preservation of which he demanded a "loan" of three hundred and fifty dollars. This letter Mr. Knapp was unable to comprehend, and handed it to his son, Joseph J. Knapp, who returned it to him, saying he might hand it to a vigilance committee which had been appointed by the citizens on the subject. This the father did, and it led to the arrest of Charles Grant, the person writing the letter, who, after some delay, disclosed the following facts: He (Grant) had been an associate of R. Crowninshield, Jr., and George Crowninshield; he had spent part of the winter at Danvers and Salem, under the name of Carr, part of which time he had been their guest, concealed in their father's house in Danvers; on the 2d of April he saw from the windows of the house Frank Knapp and a young man named Allen ride up to the house; George walked away with Frank, and Richard with Allen, and on their return, George told Richard that Frank wished them to undertake to kill Mr. White, and that J. J. Knapp, Jr., would pay one thousand dollars for the job. They proposed various modes of doing it, and asked Grant to be concerned, which he declined. George said the housekeeper would be away all the time; that the object of Joseph J. Knapp, Jr., was first to destroy

the will, and that he could get from the housekeeper the keys of the iron chest in which it was kept. Frank called again in the same day in a chaise, and rode away with Richard, and, on the night of the murder, Grant stayed at the Halfway House in Lynn. In the mean time suspicion was greatly strengthened by Joseph J. Knapp, Jr., writing a pseudonymous letter to the vigilance committee, trying to throw the suspicion on Stephen White. Richard Crowninshield, George Crowninshield, Joseph J. Knapp, Jr., and John F. Knapp were arrested and committed for murder. Richard Crowninshield made an ineffectual attempt, when in prison, to influence Grant, who was in the cell below, not to testify, and, when this failed, committed suicide. John F. Knapp was then convicted as principal, and Joseph J. Knapp, Jr., as accessory before the fact. George Crowninshield proved an alibi, and was discharged.

We have here a murder coolly planned and executed by persons of consummate skill, and yet we find the whole scheme disclosed by the following incoherences:—

(1) Joseph J. Knapp, Jr., instead of retaining or destroying Grant's letter, as he could readily have done, losing his presence of mind so far as to hand it to his father, with directions to give it to the vigilance committee.

(2) Crowninshield, ordinarily so astute and reserved, letting Grant, who was not even an accomplice, and who therefore was not pledged by fear to silence, into the secret.

(3) All the parties basing the assassination on a mistake of law, they supposing that Mr. White's representatives, in case of his death intestate, would take *per stirpes*, whereas in fact they would take *per capita;* so that actually Mrs. Beckford, to increase whose estate the murder was committed, received no more by an intestacy than she would have by the will.

§ 786. Shrewd as was the claimant in the Tichborne case, there were defects in the case which he presented which made its breaking down inevitable. These defects may be thus enumerated:— Tichborne case.

(1) The marks on his person, which were alleged to be similar to those on the person of the genuine Roger, were evidently of recent creation; and so of marks of alleged bleeding in the feet, which, it was shown, must have been made in imitation of old in-

cisions, but which could not have been produced in childhood, as was contended.

(2) The claimant paraded French such as a cockney would be likely to get up on short notice, while the genuine Roger had spent all his early years in a French school.

(3) The claimant's efforts to obtain information, in Australia, of the history and habits of the genuine heir, were in themselves marks of imposture.

(4) The resort, at the trial, to the charge of illicit intercourse, in order to break down Lady Radcliffe's testimony, had the effect of breaking down the testimony of the claimant himself in one of its material points.[1]

(5) The claimant's feigning sickness, when visited by Lady Tichborne, and refusing to be seen, except in a dark room, showed an unwillingness on his part to submit to inspection.

(6) By a blunder of the advertisements which were published for the purpose of discovering the lost heir, he was described as having "light brown hair." This was one of the marks of identity relied on by the claimant, who also had "light brown hair." It turned out, however, that the advertisement was wrong, and that the hair of the genuine heir was dark.

(7) The theory of shipwreck set up by the claimant, in order to explain his arrival at Australia, was so absurd that it had to be abandoned by him.

(8) So as to blunders made by the claimant in assuming certain peculiarities which he was erroneously informed belonged to the lost heir.

(9) And so as to his shirking of all interviews which would bring him into close proximity with parties with whom he had been acquainted prior to the time of his assuming the Tichborne name.

§ 786 *a*. The exposure of Lefroy, as the assassin of Mr. Gold, in an English railway carriage in 1881, was due to one of those slips which have been spoken of as among the incidents of crime. Lefroy's object was to rob a railway passenger, and to then cover his tracks by throwing his victim out of the carriage. In the English railway system this could be done by a strong man, the victim being comparatively weak, with the

Lefroy's case.

[1] See Morse's Famous Trials, 59 *et seq*.

probability that the criminal could escape detection, supposing he was unknown at the time to the railway guards and to the ticket-sellers, and that they took no notice of his entrance into the particular carriage. Had Lefroy attempted a robbery on a line where he was entirely unknown, he might have evaded pursuit. But he did not. His blunder and his consequent detection are thus noticed in the London *Spectator* of November 12, 1881:—"The Lefroy case was commonplace throughout. The explanation which the prisoner gave of the facts passed the limit which divides the improbable from the impossible. The most ingenious invention could not possibly have shielded him, and the invention to which he actually resorted was not even ingenious. . . . It is true that the prosecution were not able to show the steps by which the intention of murdering Mr. Gold was built up in Lefroy's mind. But it is not in the least necessary to assume that he had any knowledge of Mr. Gold or his movements before he saw him in the railway carriage at London bridge, or that in the first instance he had even formed the idea of murdering him. It seems more likely that he came to the station with the idea of committing a simple robbery on a passenger, and that it was for this purpose that he got into the carriage with Mr. Gold. To make this probable, it is only necessary to prove that he was poor enough to make the temptation to robbery very great, and on this point the evidence is complete. He was at his wit's end for money; he had pawned nearly everything he had to pawn; he had got the means of buying his railway ticket by passing off two Hanoverian medals as sovereigns in the neighborhood where he lived. . . . These facts supply all the connection with Mr. Gold that is needed to explain Lefroy's acts. He sees an elderly man disposing himself to sleep in a first-class carriage. There is no other passenger in the compartment, and he thinks that he may rob him, and then make his escape before reaching his journey's end. Very possibly he may have read of some such incident, either as a fact or a fiction, and, perhaps, have painted to himself how he would set about doing the same thing. At all events, he must have made up his mind, on seeing Mr. Gold, to murder and rob him. But the shot designed to destroy life did not even completely disable him, and the resistance which Lefroy encountered deranged his plans, and possibly disturbed his self-control. The notion of escaping from the carriage himself, and leaving his

victim in it, was abandoned—if it had ever been entertained—possibly because he no longer had the nerve to achieve the dangerous feat of jumping from a train in rapid motion; possibly because it was easier to complete the murder by throwing Mr. Gold out of the carriage than in any other way. The only remarkable feature in the case is the rapidity with which he formed the plan—which for a few hours he carried out successfully—of attributing the murder to a third person who had afterwards left the carriage, unless, indeed, this notion was from the first included in his scheme, and he intended all along to inflict some slight wound on himself, and then inform the police of the murder, in the hope of throwing them off the scent. There is an air of sensational romance about this plan, which may very probably have had its attractions for an excitable and half-educated man, such as Lefroy evidently was.

"It is singular what a fatal obstacle to the success of his plan the fact of his being known to be ticket-collector at London bridge would have constituted, even if he had succeeded in killing Mr. Gold at the first shot. Had there been no resistance on Mr. Gold's part, Lefroy probably meant to throw out the body while the train was in a tunnel, and then, if the carriage had shown no very obvious traces of the crime which had been committed in it, he might have walked away from the station without hindrance, or even notice. Even then, however, the case against him would have been a strong one. He would still have been known as the only man in the carriage with Mr. Gold, so that, with the omission of the incident of the watch in his boot, the evidence would have been pretty much the same in kind, though less in amount. If Lefroy had not chosen a line on which he happened to be known, it is quite possible that the notice taken of his appearance would not have been sufficient to insure his identification, and in that case he would almost certainly have escaped."

2. *Self-overreaching.*

Inference from excessive precautions.

§ 787. The Earl of Northampton, the second son of Henry Howard, Earl of Surrey, was the uncle of Lady Frances Sussex, the wife first of the Earl of Essex, and afterwards of Robert Carr, the famous Earl of Somerset. Private revenge and state policy led this beautiful and brilliant though bad woman to desire the murder of Sir Thomas

Overbury, who opposed her marriage with her second husband, and held secrets which might, if disclosed, thwart her political ambition. She procured or promoted the committal of Overbury to the Tower, where poison was administered to him under her direction. In the attempt, at least, she had as accomplices, her husband, and her uncle, Lord Northampton. The work was successful. The next effort was to conceal it. Helwysse, the lieutenant of the Tower, was instantly to advise Lord Northampton of the result. This he did, and then came a letter, evidently meant to be confidential, from the earl in reply:—

"Noble Lieutenant—If the knave's body be foul, bury it presently. I'll stand between you and harm: but if it will abide the view, send for Lidcote, and let him see it, to satisfy the damned crew. When you come to me, bring me this letter again yourself with you, or else burn it. Northampton."

This was written early in the morning. So great, however, was the turmoil in Northampton's mind, lest the body should not be got out of sight, that at noon on the same day he hurries off the following:—

"Worthy Mr. Lieutenant—Let me entreat you to *call Lidcote and three or four friends*, if so many come to view the body, if they have not already done it; and so soon as it is viewed, without staying the coming of a messenger from the court, in any case see him interred in the body of the chapel within the Tower instantly.

"If they have viewed, then bury it by and by; for it is time, considering the humors of the damned crew, that only desire means to move pity and raise scandal. Let no man's instance cause you to make stay in any case, and bring me these letters when I next see you.

"Fail not a jot herein, as you love y^r^ friends: nor after Lidcote and his friends have viewed, stay one minute, but let the priest be ready; and if Lidcote be not there, send for him speedily, pretending that the body will not tarry."

This had no signature, and was evidently meant for the eye of Helwysse alone. But what would the world say if the proud and great Earl of Northampton, the "wisest among the noble, and the noblest among the wise," should seem to be silent when officially informed of the death of one with whom he and Lord Rochester (the first title of Somerset) had been on such intimate terms? So

he writes to the lieutenant the following artful letter, meant for the public eye:—

"Worthy Mr. Lieutenant—My Lord of Rochester, desiring to do the last honor to his dec'd friend, requires me to desire you to deliver the body of Sir T. Overbury to any friend of his that desires it, to do him honor at his funeral. Herein my Lord declares the constancy of his affection to the dead, and the meaning that he had in my knowledge to have given his strongest straine at this time of the King's being at Tibbald's, for his delivery. I fear no impediment to this honorable desire of my Lord's but the unsweetness of the body, because it was reputed that he had some issues, and, in that case, the keeping of him above must needs give more offence than it can do honor. My fear is, also, that the body is already buried upon that cause whereof I write; which being so, it is too late to set out solemnity.

"This, with my kindest commendations, I ende, and reste

"Your affectionate and assured friend,

"H. Northampton.

"P. S. You see my Lord's earnest desire, with my concurring care, that all respect be had to him that may be for the credit of his memory. But yet I wish, withal, that you do very discreetly inform yourself whether this grace hath been afforded formerly to close prisoners, or whether you may grant my request in this case, who speak out of the sense of my Lord's affection, though I be a counsellor, without offence or prejudice. For I would be loth to draw either you or myself into censure, now I have well thought of the matter, though it be a work of charity."[1]

Unfortunately for the success of the plot, both sets of letters were preserved; and their inconsistency formed one of the chief presumptions in the remarkable trials that ensued.

Life insurance on victim as a confession.

§ 787 *a*. Insurance of the life of a person with whom the party insuring has no tie of blood or of common interest is an act which, coupled with a subsequent homicide, naturally attracts suspicion. It is true that there are cases in which one man may insure another's life merely for speculative purposes; and it is true, also, that men often insure the lives of those to whom they are much attached, and whose

[1] Amos's Great Oyer, 173, etc.

health they cherish as they would their own. Is is impossible, however, in view of many recent trials, to overlook two important facts. One is, that the prevalence of life insurance opens the way to a new line of crimes. The second is, that in opening the way, it points to the probable criminal. Two of the most extraordinary cases of this class are those of Goss, who was murdered near West Chester, Pennsylvania, in 1873, and of Armstrong, who was murdered in Camden, New Jersey, in 1878, the murderer in each case having an insurance on the life of the victim. A remarkable illustration of the same principle is to be found in the trial of Paine, in London, 1880, for the killing of Miss Maclean. "To understand," said the London *Times*, of February 27, 1880, "the motives at work and the exact position of Paine and Miss Maclean before her death, it was essential that the jury should have present to them the whole history of their relations, and this obliged the crown to call many witnesses. We have, at all events, the satisfaction of knowing that the verdict of guilty has been arrived at after an exhaustive inquiry. It is not an insignificant fact that Miss Maclean was of very small stature, that she suffered from spinal deformity, and that she was lame. Her father, Lieutenant-Colonel Maclean, died several years ago; and for some time after his death she lived with her mother in London. Just as the mother and daughter were about to take up their residence in a house called the Shrubbery, at the village of Broadway, in Worcestershire, the former died. The daughter then became entitled to some property, including gas shares and an interest in a house at Eastbourne-terrace. Miss Maclean went after a short time to live at the Shrubbery, and she was joined there by Paine. Their acquaintance dated from before the mother's death. He had visited occasionally at the house in the mother's lifetime, and had, it is to be feared, led the daughter into bad habits. After the death of the former, he renewed his acquaintance; he managed to gain her affections; and in the month of July they were living together and passing as husband and wife at the Shrubbery. With the exception

[1] Udderzook *v.* Com., App. to Whar. on Hom.; 76 Penn. St. 348, discussed in Wh. Cr. Ev. §§ 340, 353, 544, 778, 788, 805, 819. Hunter *v.* State, 40 N. J. L. § 495; discussed in Wh. Cr. Ev. §§ 262–3.

of a visit to London for ten days, they resided in Worcestershire until the journey which was to be Miss Maclean's last. There can be litttle doubt that she drank far too much, and that her weakness had revealed itself even before she went to live with Paine. He was dissipated and often intoxicated, and in his company her habits of intemperance grew to a degree which enfeebled her health. Whether he at first tempted her to indulge this passion is unknown; but it is clear that he took no pains to prevent her drinking to excess, and the amount of alcohol consumed during their first visit to London sounds incredible. Her brother, who supposed that Paine was going to marry her, and who did not know that he had a wife living, naturally wished her to make a settlement of her property which would protect her against Paine; but this did not recommend itself to him and Miss Maclean. They preferred to make wills in favor of each other, she leaving him all her property, and he leaving her all his property, which was nothing. Still more significant was the fact that Miss Maclean executed, in October, a deed of gift transferring all her property to Paine. The result of this transaction was to strip her of all that she possessed. It is also not unimportant, in an inquiry as to what was in Paine's contemplation, to note that about the time that this deed of gift was being prepared Paine tried, though unsuccessfully to effect an insurance for £250 on the life of Miss Maclean. The chief witness as to their life at Worcester, in September and October, was Fanny Matthews—a suspected witness, no doubt—and her testimony, if true, showed that at a time when Miss Maclean was ill Pain had pressed neat spirits upon her and poured them down her throat. It is fortified, too, by the evidence of Mrs. Porter who lived next door to the Shrubbery. According to her account, Miss Maclean, while admitting that she had drunk a bottle of brandy in a day, said, 'He forced me to drink it; he makes me drink it.' Why, it was asked by Mr. Serjeant Ballantine, with reference to this part of the case, did not the prisoner, if his intentions were criminal, make away with her as soon as a will was made in his favor? This is a pertinent and plausible question. The objection is, however, partly explained away by the wayward, vacillating temper of Paine, who was too often tipsy and bemuddled to be capable of deep, consecutive designs. The question might be further answered if the exact date of the attempt to insure Miss Maclean's life were known; and

it is partially answered by the fact, that during September, Paine was arranging about the deed of gift, which would vest at once in him what he desired. All this early history was relevant only so far as it threw light on the journey to London, on the 3d of November, and what took place while Miss Maclean, the prisoner, and Fanny Matthews lived at the coffee-shop kept by the Powells, in Seymour place. Indeed, the guilt of the prisoner was mainly, if not exclusively, to be determined by what Paine did during a few days before Miss Maclean's death. She was brought to London very ill or intoxicated, or both. The description of her miserable state as she was carried up stairs at Seymour place recalls the story, as told in a somewhat similar inquiry, of the death of Mrs. Staunton at Penge. According to the prisoner's story, he took her to London in order to obtain medical advice. But, whatever were his motives, he acted, to say the least, with cruelty and culpable negligence. Mrs. Powell and Fanny Matthews, the two chief witnesses who spoke as to what took place after the 3d of November, did not agree as to all points; and it was open to Serjeant Ballantine to argue that as the Powells had quarrelled with Paine, their evidence against him was unworthy of credit. But enough remained, after making all due allowance for discrepancies and exaggerations, to convict him of gross guilt. Unless Fanny Matthews, Mrs. Powell, and the nurse were in a league of perjury against him, he had failed in every duty towards one with respect to whom he had contracted obligations recognized by the criminal law as well as morality. Liquor was forced upon her while she was feeble and ill. She was 'dosed' or 'crammed' with alcohol. At a time when Paine was well aware that abstinence from stimulants was imperative, he plied her, contrary to the doctor's orders, with raw spirits. He took no steps to inform her relatives of her dangerous state. His sole desire appeared to be that few people should see her; that she should sign nothing; and that brandy and gin should be constantly within her reach. The motive for the crime lay on the surface. In November, Paine had secured all the property; and his marriage, to say nothing of his intrigue with Fanny Matthews, sufficiently accounted for a desire to get rid of Miss Maclean. The difficulty under which the prosecution labored was in showing that Paine's misconduct, though morally heinous, fell within the purview of the criminal law. It is not a crime to

stand by unconcerned while a person injures himself by drinking too much alcohol. Nor is it a crime for a stranger to be callous and indifferent towards a person who needs care and solicitude. Fanny Matthews had not engaged to provide food for Miss Maclean; her conduct was no crime; and the attorney-general had no choice but to withdraw the case against her. The same difficulty applied in some degree to the charge against Paine. It was difficult to prove that excessive stimulants had been administered by him with the deliberate intention of accelerating death; and nothing less would warrant a verdict of murder. He could not be found guilty of manslaughter without showing that he had grossly failed in some legal duty towards one who was not his wife, and who was of mature age and average intelligence. What was that duty? It did not arise out of any contract; it was not exactly the same as the duty of a father to a child. It was a duty which the law imposes whenever any one assumes the control of one who is dependent and helpless—an obligation of an ill-defined character created for the protection of the weak who are at the mercy of the strong. No one will deny that Miss Maclean had fallen wholly under the control of Paine, whom she seems to have at once loved and feared; and a jury have found, on good grounds, that he grossly abused his position and cruelly failed in the duty which he had undertaken."

In the address of Hawkins, J., to the prisoner, after conviction, the motives prompting to the homicide are thus pointedly exposed:—

"You knew well enough at the time that you could do no such thing, as you were already married, and you were in friendly communication with your wife. I do not believe, as you say, that there was any ill-feeling between Mrs. Wilson and the deceased; but what I do believe is that the mother being dead and the brother having gone abroad, you, knowing that this poor girl had property, kept her from her aunt and every other soul who was interested in her. No sooner had you gone to Broadway after you had isolated this poor creature from her friends than you made your way over to Worcester, where you had made for her a will bequeathing to you every farthing she possessed. You then tried to get her life insured in the Gresham Office for £250, and if that proposal had been accepted, it would have been £250 more in your favor in the event of her death. Then you tell me that all this was done for the purpose of satisfying her. You really must think people very

credulous indeed. I confess, for my own part, I believe not one word you have said in that respect. I cannot search your mind. I can only infer what you thought from what you did. Something occurred to you which led you to write to Mr. Goldingham, asking him to prepare the deed of gift, which you no doubt thought would be more secure for you, as a will is not always secure—it might be impeached on the ground of undue influence. You got this deed of gift prepared, and got her to execute it. At that time she seems to have been in perfect health, as there is not a single witness who speaks to her health having been failing before that time, although it was said that she was fond of drinking and given to taking more than was good for her. She, however, suffered little from that, and was always cheerful and happy, and appeared to be attached to you. You appeared to be attached to her, and you made use of expressions when at the insurance agent's which led him to believe that you were a little too affectionate. Possibly you thought that a great deal of affection shown at that time would the more readily induce her to sign more documents to put her property into your hands at a time when she had no friends and no advisers—her mother dead and her brother gone."

"You have spoken of your kindness and attachment to her. How did you show it on the first night? You left her alone. How did you show it the next night? Why, by taking from the house her only attendant, and from that time you and Fanny Matthews lived together as man and wife. Then you wanted to make believe that this poor creature had gone to Brighton with you. I cannot dwell with moderation upon your inhuman conduct. I can conceive nothing more atrocious than the exclamation you made on the last morning on which that poor creature saw the light of day—to her you said it was a sin to preserve such a life. Under these circumstances what ought I do with you, who have, in my judgment, been guilty of a crime next in enormity to the crime of murder. Had you been guilty of murder, most unquestionably you would have been hanged, as you richly deserve to be. As it is, I have the power to pass upon you the next sentence in severity to that of death, and that sentence I think it my duty to pronounce. For the atrocious crime of which you have been convicted, I condemn you to be kept in penal servitude for the term of your natural life."

III. AFTER CRIME.[1]

1. *Convulsive confessions.*

§ 788. "The guilty soul," said Mr. Webster, in a speech already quoted, "cannot keep its own secret. It is false to itself; or rather it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment, which it dares not acknowledge to God or man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him; and, like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstance to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed; there is no refuge from confession but suicide, and suicide is confession."

Confessions may be instructive.

Confessions that are voluntary are out of the range of the present discussion. Of those that are involuntary or convulsive we may take the following illustrations:—

§ 789. A confession by an insane person is entitled to no weight.[2] It may happen, however, that a reliable confession may be made during a lucid interval, or that true statements made during delirium may be corroborated *aliunde*. John Whitney, a wealthy farmer of Loudonville, Ohio, was robbed and murdered in November, 1856. Great but unsuccessful efforts were made to ferret out the murderer. A man named Stringfellow, who was living at Loudonville at the time, was strongly suspected

When in delirium or dreams.

[1] This topic is discussed in its technical relations in Wh. Cr. Ev. 8th ed. §§ 628 *et seq.*

[2] See Wh. on Cr. Ev. 8th ed. §§ 632 *et seq.*

of the crime, but nothing could be fastened upon him. Stringfellow soon afterwards left the neighborhood, and, after an absence of two years, settled in the village of Johnstown, Hardin County. Here he was taken sick, and in his illness became delirious. It would seem that conscience was constantly at work within him, for during his delirium he mentioned Whitney's name frequently, and divulged a number of secrets which had been long hidden in his bosom, and which left but little doubt that he was the guilty man. The clue having been obtained, facts were elicited which established his guilt.

The fact that a confession was made during sleep excludes it;[1] but it may nevertheless be the means of drawing out facts on which a conviction may rest. A person who worked in a brewery at Basle, in Switzerland, quarrelled with a fellow-workman, and struck him in such a manner as to produce instant death. He then took the dead body and threw it into a large fire under the boiling vat, where it was in a short time so completely consumed that no traces of its existence remained. On the following day, when the man was missed, the murderer observed that he had seen his fellow-servant intoxicated, and that he had probably been drowned in crossing a bridge which lay on his way home. For seven years after no one entertained any suspicion as to the real state of the case. At the end of this time, the murderer, being again employed in the same brewery, was constantly reflecting on the singularity of the circumstance that his crime had been so long concealed. One night one of his fellow-workmen, who slept with him, hearing him say in his sleep, "It is now fully seven years ago," asked him, "What was it you did seven years ago?" "I put him," he replied, still speaking in his sleep, "under the boiling vat." As the affair was not entirely forgotten, the man, suspecting that his bed-fellow might allude to the person who was missed about that time, informed a magistrate of what he had heard. The murderer was apprehended, and, though at first denying all knowledge of the matter, afterwards confessed and was executed. An analogous case is reported by Abercrombie as having occurred in Scotland early in the present century. A peddler had disappeared under circumstances which made it probable that he had been murdered. All attempts to dis-

[1] Wh. Cr. Ev. 8th ed. § 676.

cover the assassin failed. At last a wayfaring man, who had been strolling about the neighborhood, dreamed that the body would be found in a particular spot, and that certain persons with whom he had lately been sleeping in a barn were the guilty parties. It turned out that this was true. But it also turned out that the dreamer had, in his own dreams, heard the convulsive confessions of one of the assassins, the latter also dreaming.[1]

[1] In Mr. Noak's speech in Lowenstein's case (Albany, 1874) we have the following :—

"The truth is the conscience of the murderer is never silent. On one occasion he may be compelled, in order to restrain and stifle the stings of conscience, to resort to apparent ease and forced gayety, and in another he may not be able to throw off that spectre that haunts him ever after committing such a crime. To refer to a well-authenticated case that occurred in this city within the last thirty years. It is the case of the celebrated English forger, Charles Webb. I refer to it to show how certain the criminal is, to himself furnish the proof which leads to his detection, and which points to him as the criminal. On the 28th of November, 1847, a man presented at a bank in this city, of which Mr. A. P. Palmer was cashier, a check purporting to have been drawn by Tweddle & Darlington for $805, and received the money upon it. It was paid to him in $10 bills of a new issue. Within a short time after he left the bank it was discovered that the check was a forgery. Immediately on this discovery the bank cancelled all the bills of that issue and destroyed the plates, believing that if they were out the forger would be unable to pass them, or that they would lead to his detection. A few of them came in—one came from Ballston and one from Saratoga—but in each case the *number* had been burned out, showing that the person who committed the forgery was aware that the bank had destroyed all similar bills, and that if the numbers remained they might lead to his identification. About a year from that time a man presented himself at Dixon's hat store in this city and purchased a hat. After he had purchased it he said to Mr. Dixon, 'I don't know as you will take my money.' This remark caused Mr. Dixon to think there was something wrong about the money. It was a bill on a bank in his own city, and it appeared to be genuine, but the simple remark made by his customer made him think there was something wrong; so he sent a boy to George E. Payne, a broker, to see if the bill was genuine. Mr. Payne at once saw it was one of the bills that had been obtained upon the forged check, and walked over to Mr. Dixon's store to see the man who presented the bill. Webb, who went by a fictitious name, suspecting something was wrong, went out of the store and walked up State Street. He was speedily overtaken and arrested, and was soon afterwards indicted. While in the jail he gave the sheriff the key of a trunk which he said he had at Troy, and asked the sheriff to get it for him, not for a moment supposing that he would open the trunk to see what it contained. But the sheriff having the key did so, and in it were seven hundred dollars of the stolen bills, with the dates burned out. He was convicted, and it turned out our police had captured the

§ 790. Confessions may also, with hardened criminals, become in a degree involuntary from the fact that crimes which have been frequently committed become so familiar to

From callousness.

celebrated forger, Charles Webb, of England. It was a simple remark, and one would have thought he would never have made it.

"I remember the case of Gordon, and so do many of you, who was tried for the murder of a man named Owen Thompson, at West Albany, a short distance only from where this murder was committed. A drover in that case was murdered for a few hundred dollars. No one saw it done. In the morning the poor man was found hanging on to a fence with his skull crushed in by a blow with a piece of wood used for binding bales of hay. The day previous, at West Albany, the supposed murderer had had a conversation with a man named Genter. During the conversation he said to Genter, 'Haven't I seen you somewhere behind a bar?' It was a simple remark, and of no consequence or significance then to Genter. The murderer went on to Rochester. Chief Maloy went to Rochester, where a state fair was being held, with a man who claimed he could identify the man who was last seen with Thompson. Gordon passed within a few feet of them. Strange to say, Maloy's companion never said a word about it, in consequence of the superstition some people have against being considered informers. Time went on. Gordon went to Saratoga and purchased a span of horses, and the vagabond of a short time previous was now driving a spirited team. The same Providence which prompted the remark by Gordon to Genter the day previous to the murder, set him down in the same car with him, one seat in front of Genter. The same train of ideas were in his mind on this occasion as on the day previous to the cruel murder. Looking at Genter and scrutinizing him, again he said: 'Haven't I seen you somewhere behind a bar?' Genter at once remembered hearing the remark before, and that he was the man who was suspected of having murdered Thompson. At the next station he telegraphed to the chief of police in this city, and detained Gordon at Schenectady until the chief came there. He was placed under arrest, and, when it was found that it was Gordon, Maloy was laughed at for the blunder. But the train of circumstances pointed to him with certainty, and he was indicted, tried, and convicted, and but for the action of a single juror he would have been hanged. As it was, he was committed to state prison for life, and that juror, who lived in Schoharie County, has never got over the public odium which attached to his course upon the trial. It was a simple remark, 'Haven't I seen you somewhere behind a bar?' but it pointed to Gordon, who talked with Genter the afternoon before Thompson was murdered, as certainly as the fact that you and I are here now trying this case."

In Burrill's Cir. Ev., pp. 673–76, is the following:—

"In crimes of a comparatively petty character, the same singular disregard of relations and consequences is sometimes found to take place. Thieves and receivers of stolen goods have been known to keep the stolen articles in their possession with the owner's marks still apparent upon them, thus furnishing a means of immediate identification and detection.

"The *causes* of this singular and

the criminal himself as to seem every-day occurrences, which he recurs to as naturally as a farmer to his ploughing and sowing,

sometimes sudden blindness to the criminal's immediate and obvious interest in the case, and this disregard of what may be called the necessary policy of his conduct, may now be more particularly examined. The circumstance of creating evidence against himself, in the way of *omission* (that is, by omitting to destroy the impressions and vestiges of his own action), sometimes arises from the self-imposed *necessity* of the case. In entering upon the actual perpetration of a great crime, the criminal commits himself to the issues of events which he can neither foresee nor perfectly control. With the best contrived plan of proceeding, and the best adapted means of action, he often encounters, and sometimes at almost every step, difficulties and obstacles, against which no provision (or no effectual one) could be made. A trifling accident may serve to endanger the whole enterprise. The premises sought to be invaded are found to be secured with unusual care: the intended victim takes the alarm, and makes a long and desperate resistance, with cries of distress which violence cannot wholly stifle. To deal the mortal blow and escape for his life is sometimes all the murderer can do. He has *no time* for acts of concealment which often take whole days and nights to perform adequately. Again, this omission or neglect to conceal the traces and evidences of criminal action, even when present to the actor's view and within his reach and control, may be attributed to that *confusion* of mind and memory, which, particularly in cases of inexperienced offenders, is often found to attend the commission of great crimes, and occasionally wholly frustrates their accomplishment. The murderer *forgets* that his feet are making the impressions which are to lead to his discovery. The thief *forgets* to erase from the article which he has stolen the owner's marks; or he trusts to superficial appearances without making thorough examination. He keeps the stolen box in his possession, till it is there found, without thinking of looking on the bottom, where the evidences of ownership are distinctly written. Lastly, supposing greater coolness and circumspection to be observed in the criminal act, the same circumstance of omission may be ascribed to an excess of *confidence* on the part of the offender, in his own intended after-conduct, and in his purpose and plan of *subsequent* destruction or concealment of the evidence of guilt, or of the concealment of his own person, or final escape from danger by flight. All such explanations, however, fail to take from these acts of omission their character of intrinsic and manifest folly. But it is in those cases where the criminal, having effectually perpetrated the crime and *escaped discovery*, deliberately creates with his own hand the strongest evidence of it, and puts it, as it were, upon record, that this feature of folly is found to reach the height of absolute infatuation, having almost the quality of mental imbecility, though without any of its exculpatory claims or consequences.

"The folly, therefore (even to a glaring degree), of particular acts on the part of a person accused of crime is by no means an unanswerable proof of their not having been committed by him, or, if committed, of having been the result of irresponsible agency. They are parts of a condition of human

or a merchant to his sales. As illustrating this principle may be considered the case of Mrs. Lydia Sherman, of New Haven, Connecticut, as reported in the *New York Herald* for January 13th, 1878. The technical questions arising in this extraordinary case are noticed by me in another work.[1] Mrs. Sherman, after her conviction, confessed, according to a subsequent summary in the *London Spectator*, in full to eight murders by arsenical poisoning; the victims being her first husband, Mr. Struck, a carriage blacksmith, and afterwards a policeman; four of her own children; her third husband, Mr. Sherman, and two of his children. Her second husband, Mr. Hurlburt, died with similar symptoms of arsenical poisoning, but she maintained that it was not with her knowledge at all

action, which seems to have been divinely appointed, as a most effectual instrument in a system of self-retribution; and without which crimes of the most aggravated enormity would constantly and forever escape and defy discovery.

"But in a wider range of observation, looking at crime *in general*, as a course of conduct prompted by certain motives, and persisted in, in the hope of attaining certain ends, its intrinsic folly, under any circumstances, becomes apparent. In yielding to the force of temptation (the real essence of most forms of guilt), and voluntarily encountering the hazard of consequences far outweighing the pain proposed; in entering on a path purposely obscured, and most literally crooked and tortuous, where the end can never be seen from the beginning, and trusting himself and all his interests to the issues of events which he can never wholly control, the criminal constantly manifests the most egregious folly. And such is often his own declared estimate of himself, the moment after the criminal impulse is satisfied, and he has time to reflect on what *has been done*, and what is *to be done*. And, perhaps, the bitterest and most intolerable ingredient of remorse, when, after all his arts have been exhausted in attempts to conceal his guilt, he finds himself detected and condemned, is the same abiding consciousness of his own folly.

"The criminal practice of the old Roman law furnishes an illustration which may be used as a fitting conclusion to the present course of remark. In capital cases, when the jury condemned the accused, instead of using the direct language of our time and system, and pronouncing him 'guilty' of the crime charged, they adopted an indirect form of expression, and disguised the dreadful announcement under one of those euphemisms in which their language abounded: '*Parum cavisse videtur*,' said they: 'He seems to have been incautious,' 'We think he has not been sufficiently upon his guard!' Want of due *caution* most comprehensively and forcibly expresses the sum of the whole conduct of a condemned criminal, from its earliest instigating impulse to its fatal result. Caution might, perhaps, have led him to escape detection and its penalty; but truer and wiser caution would have enabled him to escape the crime."

[1] Wh. Cr. Ev. 8th ed. § 50.

events, that he got the poison; it is possible, that in this instance she may have been only the occasion of the death, and not its cause —Mr. Hurlburt having possibly confounded some of his wife's arsenic with powders of his own with which he was accustomed, as she says, to guard against the acidity of his beer. What is remarkable, as is noticed by the *Spectator*, is that Mrs. Sherman always uses the same phrase, "discouraged," to describe the state of mind which induced her to commit murder. "Time after time she repeats that she was greatly 'discouraged' at the thought of her husband or her children being a burden to her, and that under this sense of discouragement she quietly put them out of the way. Only on the first occasion does she attribute the crime to external suggestions. She asserts that a police officer suggested to her to put her first husband, who had taken to his bed, and was apparently suffering from softening of the brain, out of the way, and recommended her to try arsenic. But as there does not appear to have been the slightest motive for his suggesting such a crime, as there is no hint even of an intrigue, or of any further relation between him and the woman he is said to have advised, we cannot believe this part of the story; a bad man would not have given very dangerous advice by which he was to take no profit, and, of course, a decent man would not have given such advice at all; so that the falsehood, if it be one, throws grave doubt on her assertion of being innocent of the murder of her second husband, and makes it seem not unlikely that this apparently arbitrary disavowal of guilt was due to some inexplicable association which made it more painful to her to confess this than any another crime. It seems that to this husband she was indebted for a substantial bequest in the way of property, and this, while it adds to the probability of the murder, may have rendered her less willing to avow it. It clearly was not in this case 'discouragement'—the motive uniformly pleaded in every other—which led to the murder, if murder it was. There was no pretence for fearing that Mr. Hurlburt would be a great burden to her, either pecuniarily or otherwise. He had enriched her, and left her better off than she had ever been before in life. One of the worst parts of the story of Mrs. Sherman's confession is that, after making it, and talking a good deal of horrid rant about her conversion and reconciliation to Christ, she declared herself very happy indeed, which she had, she said, never been before in life,

and accompanied her declaration with what the *New York Herald's* reporter calls a kind of 'festive titter,' which went through her whole frame and gave her an appearance of real enjoyment. The chronic 'discouragement' which had led to her eight or nine murders had now apparently for the first time ceased. It is another curious feature of the case that the woman seems to have lived a regular and quiet domestic life till she was nearly forty, and only to have begun her course of murders at that age, when her first husband's brain began to soften and she first became 'discouraged.' After that every little discouragement led to new murders. She put two of her children, a daughter and son, out of the way—the son, 'a beautiful boy, who did not complain during his illness'—from 'discouragement' at the prospect of having to support them; then a third son, nearly grown up, was murdered from discouragement at the prospect of a long illness in which she might have had to support him; then a second daughter, somewhat of an invalid, the care of whom kept her occasionally at home, was murdered, out of discouragement at the prospect of 'a hard winter;' her third husband she dosed with arsenic in his drink, she says out of the wish to sicken him of drink—a very unlikely story for a woman so experienced in the fatal effects of arsenic; and his two children—the baby, and a daughter who had shown great attachment to her murderous step-mother—she apparently poisoned solely to get rid of small domestic annoyances. She seems to have had a calm, kindly manner popular with men, and not exciting any suspicion among the doctors, who, like our English country surgeons in the recent case in the north, uniformly ascribed the arsenical sickness, to the woman's own great surprise, to gastric fever, except in one case, that of her eldest son, a painter, in which it was ascribed to 'painter's colic.' Under this calm, easy manner she seems to have concealed one of those cold and callous hearts to which the prospect of inconveniences or annoyances of any kind immediately suggested that they were most likely to be radically removed by removing the persons who caused them. The interest of the perpetually recurring phrase she uses to describe her motive—'discouragement'—is not so much that it appears to have been really her chief motive, as that it was almost certainly the state of feeling by which she excused to herself her wonderfully cruel and reiterated murders. In confessing her state of mind when about to murder

her eldest son, she remarks that she now knows that her deep feeling of discouragement was 'not much of an excuse, but I felt so much troubled that I did not think about that.' To her own mind it evidently palliated the enormity of her guilt to reflect that she had no heart to encounter the troubles and annoyances before her if she had allowed her husbands and children to go on fretting her by their demands for attendance and help. What could she do in that dejected state but just slip them quietly out of the way, by mixing 'half a thimbleful of arsenic' in their tea or gruel? If she had had more energy, more hope, more life, she thinks there would have been less excuse for her. As it was, the temptation was too severe; she subsided into murder, as it were, through sheer fatigue of mind at the thought of the many troubles before her if she hesitated about it. The grim peculiarity of the case is this curious assumption that murder, instead of needing positive passion or other powerful incentives of some vulgar kind to account for it, is, as it were, the natural resource of feebleness and languor of temperament. If you don't feel up to fighting your way through difficulties, the natural man suggests to you, as Mrs. Sherman evidently thinks, not to droop and die, or at worst to put an end to yourself, but to put an end to your sources of human anxiety, as you would to gnats or hornets, by extinguishing their life, not your own. You see your eldest son, who had contributed a good deal to your support, sickening, and becoming not only a pecuniary burden, but a probable cause of fatigue and fret for weeks to come, and the natural recourse of the imagination is to the most convenient mode of finally silencing all these importunate demands. The woman, by her own account at least, never seems to have thought of murder till some inconvenience arose to her from the person whom she proposed to murder. She had no insane or morbid delight in the process. It was not till it occurred to her that but for little Ann Eliza's claims on her time she and the elder daughter Lydia would make a good income together, that she gave little Ann Eliza arsenic to clear her out of the way. It was not till she found that her little step-son, Franky Sherman, very inconveniently for her, would neither get quite well nor die, that she found it advisable to put an end to the hesitation of nature by giving him a very decided impulse towards the grave. There does not seem to have been any murderous eagerness in the woman. It was simply that she felt it the

most natural resource when she wanted to remove a cause of friction. A husband or child caused her low spirits, and the only way to remove the weight on her spirits was to make the inconvenient husband or child disappear. No account of the psychology of murder more ghastly can well be suggested, and yet it does put very strongly before us one element in moral evil to which attention is too little drawn. The common conception of the most hideous forms of moral evil is a conception of something due to the excess of passion, or self-will, or love of wealth or ambition, or some other not necessarily ignoble motive—only ignoble when it comes into collision with and overpowers other far nobler impulses. But we forget too much that in all these cases what looks like the superfluous energy and excess of some quality which, in moderation, we do not despise but perhaps even admire, almost always implies also an immense deficiency in the power of sympathy, in the capacity for entering into the life of others. And it is less the apparently active motive, than the deficiency of some other much nobler motive, which really causes the temptation. Ambition, however high and overweening, would seldom lead to crimes of this kind, unless there was such a slowness and poverty of sympathy with the victims of our evil deeds that the weight in the other scale were wanting. After all, it is far oftener want of sympathetic life than excess of egoistic life which tempts to these crimes. And in this wretched woman's case we have the most perfect illustration that the most dwindled nature, the nature not of most passion, but of least, is the one of purest evil. A creature whose languor is the destructive element in her, who murders to save herself from a little worry, who gets rid of her daughters and sons as she would of troublesome midges, and first finds out when she is convicted that low spirits are not sufficient excuse for a habit of murder, is the most terrible warning that human imagination can conceive of the wholesale destructiveness of pure, unadulterated self-occupation—of the fierce scourge which moral nothingness—refined, as it were, to a sharp invisible sword-edge for the slaying of others—may become for the more positive life with which it comes in contact. Cease to care for any one but yourself, and, though you have not life enough to want for yourself anything postitive, though your only real desire may be to rid yourself of inconvenience, you will become, by virtue of the very grinding away of your nature, at once more destructive

and far more dangerous than creatures of larger passions with something left in them on which the sense of guilt and fear may act. Mrs. Sherman, with her titter of recovered happiness and her murderous 'discouragement,' seems to us a sort of parable of the truly negative and yet sweepingly destructive character of pure evil—of that climax of calm deceit and deadly purpose to which dwindling sympathies and torpid desires may rise, when they have shrunk into the keen, intangible, invisible knife-edge of purely passive self-love." So far as concerns the topic immediately before us, the retributive element in guilt of this particular type is, that when the criminal loses his abhorrence of crime he loses the reticence by which crime is concealed. When he becomes callous he ceases to become secretive. The wickedness that perpetrates a long series of crimes is the wickedness that discloses their perpetration.

Caution as to confession under delusion.

§ 791. It must be remembered, however, that confessions may emanate from delusion, or from a morbid desire to attract attention, a sort of epidemic which sometimes strikes down whole classes with a passionate impulse to insist upon some blood-stain on the conscience, something like the hypochondriac epidemic impulse which insists upon some personal abnormity;[1] from weariness of life, or from a propensity to self-destruction through a channel which from its very tortuousness possesses its own fascination.[2]

Delusions. Case of the Boorns.

§ 791*a*. As illustrating delusions the following case may be cited: Two brothers, named Boorn, living in Vermont, had an altercation with their brother-in-law, a man named Colvin, a partial lunatic. They left him, as they may well have supposed, in a dying state. He crawled off, however, and fled to the Middle States. Several years afterwards, suspicion was excited by a dream of an uncle of the supposed murderers. In this dream he was told that Colvin had been murdered, and that his remains would be found in a spot that was pointed out. The dream was repeated three times until at last the place was searched, and some articles of clothing were found which were identified as Colvin's. Then a spaniel, connected in some way with the Colvin

[1] We have an illustration of the latter in a convent of nuns, near Chalons, who were stricken down with the belief that they were cats.

[2] These points will be found expanded and illustrated in Wh. Cr. Ev. 8th ed. §§ 626 *et seq.*

family, was seen snuffing uneasily about the spot close by, calling attention to it by his importunities. It, too, was examined, and a cluster of bones were drawn up by the dog's paw. That these were Colvin's, and that these almost miraculous interpositions were designed to bring the murder out, there were none in the community who doubted. Other circumstances led to the arrest of the Boorns. They were conscious of guilt, and it is no wonder that these strange prosecutors, who after so long an interval had united by means so extraordinary to ferret out their guilt, should have impressed them with a belief that it was vain to fight against what seemed to be divine vengeance. So one of them confessed the murderous assault, and went on further to state how, in order to evade detection, the body had been partially burned, and the clothes destroyed. The first part of the story was true; the last was a fabrication, the result either of delusion or of desperation, or of that impulse to complete a story with which the imagination is sometimes seized. That the actual death was indeed false, was shown by the subsequent appearance of Colvin himself, in time to intercept the execution of at least one of his supposed murderers.

But a still more singular confession followed. The first was in 1819. In 1860 a very old man named Boorn was arrested in Cleveland for counterfeiting. When in custody, he confessed that forty years before he had been concerned in a murder, and escaped by a false personation of the deceased. The confession led to a re-investigation of the former trial. That the second confession, as well as the first, was a delusion, was established finally. But the retention of this delusion for forty years in the criminal's breast shows the enduring effect on the nervous system of a sense of guilt, even though that guilt was not consummated.[1]

[1] See Wh. Cr. Ev. 8th ed. § 634; Blackwood's Magazine, July, 1860, p. 54; Journ. Psyc. Med. 1871, p. 357; *supra*, § 200*b*. See also the case of Sören Qvist, in Mr. Phillips's Famous Cases of Circumstantial Evidence.

Lamon's Life of Lincoln (1872), p. 318, gives the following letter from Mr. Lincoln:—

"Springfield, June 19, 1841.

"Dear Speed: We have had the highest state of excitement here for a week past that our community has ever witnessed; and although the public feeling is somewhat allayed, the curious affair which aroused it is very far from being over yet, cleared of mystery. It would take a quire of

In the same connection may be examined a well-known English case called the Campden Wonder. An old man, named William

paper to give you anything like a full account of it, and I, therefore, only propose a brief outline.

"The chief personages in the drama are Archibald Fisher, supposed to be murdered, and Archibald Trailor, Henry Trailor, and William Trailor, supposed to have murdered him. The three Trailors are brothers. The first, Archibald, as you know, lives in town; the second, Henry, in Clary's Grove; and the third, William, in Warren county; and Fisher, the supposed murdered, being without a family, had made his home with William. On Saturday evening, being the 29th of May, Fisher and William came to Henry's in a one-horse dearborn, and there staid over Sunday; and on Monday all three came to Springfield (Henry on horseback), and joined Archibald at Myers's, the Dutch carpenter. That evening at supper Fisher was missing, and so next morning some ineffectual search was made for him; and on Tuesday, at one o'clock P. M., William and Henry started home without him. In a day or two Henry and one or two of his Clary Grove neighbors came back for him again, and advertised his disappearance in the papers.

"The knowledge of the matter thus far had not been general, and here it dropped entirely till about the 10th inst., when Keys received a letter from the postmaster in Warren county, that William had arrived at home, and was telling a very mysterious and improbable story about the disappearance of Fisher, which induced the community there to suppose he had been disposed of unfairly. Keys made this letter public, which immediately set the whole town and adjoining county agog. And so it has continued until yesterday.

"The mass of the people commenced a systematic search for the dead body, while Wickersham was dispatched to arrest Henry Trailor at the Grove, and Jim Maxey to Warren to arrest William. On Monday last Henry was brought in, and showed an evident inclination to insinuate that he knew Fisher to be dead, and that Archibald and William had killed him. He said he guessed the body could be found in Spring Creek, between the Beardstown Road and Hickox's mill. Away the people swept like a herd of buffalo, and cut down Hickox's mill-dam *nolens volens*, to draw the water out of the pond, and then went up and down, and down and up the creek, fishing and raking, and raking and ducking, and diving for two days; and, after all, no dead body found. In the mean time a sort of a scuffling-ground had been found in the brush in the angle or point where the road leading into the woods past the brewery and the one leading in past the brick grove meet. From the scuffle-ground was the sign of something about the size of a man having been dragged to the edge of the thicket, where joined the track of some small wheeled carriage drawn by one horse, as shown by the road-track. The carriage track led off towards Spring Creek. Near this drag-trail, Dr. Merryman found two hairs, which, after a long scientific examination, he pronounced to be triangular human hair, which term, he says, includes within it the whiskers, the hair growing under the arms, and on other parts of the body; and he judged that these two were of the whiskers, because the ends were cut, showing that they had

Harrison, steward to Lady Campden, went out on foot on the 16th of August, 1660, to collect rents. He did not return at his usual

flourished in the neighborhood of the razor's operations.

"On Thursday last Jim Maxcy brought in William Trailor from Warren. On the same day Archibald was arrested, and put in jail. Yesterday (Friday) William was put upon his examining trial before May and Lavely; Archibald and Henry were both present. Lamborn prosecuted, and Logan, Baker, and your humble servant defended. A great many witnesses were introduced and examined, but I shall only mention those whose testimony seemed most important. The first of these was Capt. Ransdell. He swore that, when William and Henry left Springfield for home on Tuesday before mentioned, they did not take the direct route, which, you know, leads by the butcher-shop; but that they followed the street north until they got opposite, or nearly opposite, May's new house, after which he could not see them from where he stood; and it was afterwards proved, that, in about an hour after they started, they came into the street by the butcher's shop from towards the brick-yard. Dr. Merryman and others swore to what is stated about the scuffle-ground, drag-trail, whiskers, and carriage tracks.

"Henry was then introduced by the prosecution. He swore that when they started for home, they went out north, as Ransdell stated, and turned down west by the brick-yard into the woods, and there met Archibald; that they proceeded a small distance further, when he was placed as a sentinel to watch for and announce the approach of any one that might happen that way; that William and Archibald took the dearborn out of the road a small distance to the edge of the thicket, where they stopped, and he saw them lift the body of a man into it; that they moved off with the carriage in the direction of Hickox's mill, and he loitered about for something like an hour, when William returned with the carriage, but without Archibald, and said that they had put him in a safe place; that they went somehow, he did not know exactly how, into the road close to the brewery, and proceeded on to Clary's Grove. He also stated that some time during the day William told him that he and Archibald had killed Fisher the evening before; that the way they did it was by him (William) knocking him down with a club, and Archibald then choking him to death.

"An old man from Warren, called Dr. Gilmore, was then introduced on the part of the defence. He swore that he had known Fisher for several years, that Fisher had resided at his house a long time at each of two different spells; once while he built a barn for him, and once while he was doctored for some chronic disease; that two or three years ago Fisher had a serious hurt in his head by the bursting of a gun, since which he had been subject to continued bad health, and occasional aberration of mind. He also stated that on last Tuesday, being the same day that Maxcy arrested William Trailor, he (the doctor) was from home in the early part of the day, and on his return, about 11 o'clock, found Fisher at his house in bed, and apparently very unwell; that he asked him how he had come from Springfield; that Fisher said he had come by Peoria, and also told of several other places he had been at, more in the direction of Peoria, which showed that he at the time of speaking did not know where he had been wan-

hour, and his wife sent his servant, John Perry, to inquire after him. Perry, according to his own account, wandered about during the night without finding his master. The next morning, however, a hat and comb much hacked and cut, and a band stained with blood, which had been worn by Harrison the evening before, were found in a wild spot, near a large furze brake, where he would have been likely to have been met by Perry. The neighborhood naturally enough jumped at the conclusion that Harrison was murdered, and that Perry was the murderer. Perry soon came to this conclusion too, and made a confession to this effect, implicating his brother and mother. The trial took place, and, though there was no proof of

dering about in a state of derangement. He further stated, that in about two hours he received a note from one of the Trailor's friends, advising him of his arrest, and requesting him to go on to Springfield as a witness, to testify as to the state of Fisher's health in former times; that he immediately set off, calling upon two of his neighbors as company, and riding all evening and all night, overtook Maxcy and William at Lewistown in Fulton County. That Maxcy refusing to discharge Trailor upon his statement, his two neighbors returned, and he came on to Springfield. Some question being made as to whether the doctor's story was not a fabrication, several acquaintances of his (among whom was the same postmaster who wrote to Keys as before mentioned) were introduced as a sort of compurgators, who swore that they knew the doctor to be of good character for truth and veracity, and generally of good character in every way.

"Here the testimony ended, and the Trailors were discharged, Archibald and William expressing, both in word and manner, their entire confidence that Fisher would be found alive at the doctor's by Galloway, Mallory, and Myers, who a day before had been dispatched for that purpose; while Henry still protested that no power on earth could ever show Fisher alive. Thus stands this curious affair.

"When the doctor's story was first made public, it was amusing to scan and contemplate the countenances, and hear the remarks of those who had been actively engaged in the search for the dead body; some looked quizzical, some melancholy, and some furiously angry. Porter, who had been very active, swore he always knew the man was not dead, and that he had not stirred an inch to hunt for him. Langford, who had taken the lead in cutting down Hickox's mill-dam, and wanted to hang Hickox for objecting, looked most awfully woebegone; he seemed the '*victim of hunrequited affection*,' as represented in the comic almanacs we used to laugh over. And Hart, the little drayman that hauled Molly home once, said it was too damned bad to have so much trouble, and no hanging after all. I commenced this letter yesterday, since which I received yours of the 13th. I stick to my promise to come to Louisville. Nothing new here, except what I have written."

See 4 West. Law Journ. 25, for additional details.

the *corpus delicti*, the mother and the two sons were convicted and executed. Some years afterwards Harrison reappeared at Campden, stating that he had been robbed by ten horsemen on the night in question, and then kidnapped and carried beyond seas. It is possible, supposing this to be true, to explain Perry's conclusion on the ground either of delusion or of desire for notoriety.

§ 792. Of confessions from desire for notoriety we have numerous illustrations. A mulatto named Chastine Cox was tried in New York in 1879 for the murder of a lady under circumstances which made it for some time difficult to find the track of the assassin. Public attention was directed to the question for several weeks; numerous communications appeared in the papers implicating more or less directly various parties; and the police were advised of a confession by a tramp, who took this way of attracting attention to himself as the supposed murderer, but who turned out ultimately not to have had the slightest connection with the offence. Desire for notoriety.

Mr. McCarthy, when discussing in his history the Jamaica investigation of 1865, says: "Many wild exaggerations had found their way into some newspapers. These came from private letters. It sometimes happened that men who had been engaged in putting down the insurrection represented themselves as having done deeds of savage vengeance of which they were really not guilty. . . . Such seems to have been the fervor of repression in Jamaica that persons were found eager to claim an undue share of its honors by ascribing to themselves detestable excesses which, in point of fact, they had not committed."

Of confessions of this class hypochondria gives many illustrations. Persons whose temperament has become thus touched will resort to the most desperate methods to attract attention. The most innocent type that we have is that of the sentimentalist, who feigns certain mental experiences of a peculiarly poignant character, which experiences are hung out something in the way pictures are in a gallery, to excite the interest of the amateur. Of course the more lurid the coloring, and the more sad the sorrow it depicts, the more real the sympathy to be secured from an honest and kind-hearted observer, and the more profuse the ejaculations of the mere co-sentimentalist.

Next *facts* are fabricated as well as *experiences*. Thus Cheru-

bina believes that she was changed in the cradle, and that an earl and a countess are her parents, instead of the old farmer and his wife who brought her up. This big lie, of course, necessitates a myriad of minor ones to enable it to be carried about with a proper retinue, until Cherubina's whole life becomes a fabrication. If guilt has to be confessed to make up a consistent story, a confession of guilt is fabricated.

Persecutions with such are favorite myths. Margaret Fuller, whose attitudes and surroundings, in spite of her apparent earnestness, were all pictorial and artificial, made the neglect she suffered from her father one of the favorite topics in her letters, though even her editor, laudatory as he is, is forced to tell us that all this neglect was imaginary—that a kinder or truer father did not exist. It is still doubtful whether Casper Hauser's wounds were not self-inflicted and his dumbness self-assumed. And it is certain that the more tender the care bestowed on such cases is, and the more confiding the sympathies, the more frequent and subtle the simulation.

But if the flag by which this attention is to be roused is inscribed among the more refined with a sentiment, among the coarser it is likely to be blazoned with a crime. Lord Cockburn, in his memoirs, gives us the following instance of this:—

"On the 13th of November, 1806, a murder was committed in Edinburgh which made a greater impression than any committed in our day, except the systematic murders of Burke. James Begbie, porter to the English Linen Company's Bank, was going down the close in which the bank then was, on the south side of the Canongate, carrying a parcel of bank-notes of the value of four or five thousand pounds, when he was struck dead by a single stab, given by a single person who had gone into the close after him, and who carried off the parcel. This was done in the heart of the city, about five in the evening, and within a few yards of a military sentinel, who was always on guard there, though not exactly at this spot, and at the moment possibly not in view of it. Yet the murderer was never heard of. The soldier saw and heard nothing. All that was observed was by some boys who were playing at hand-ball in the close; and all that they saw was that two men entered the close as if together, the one behind the other, and that the front man fell, and lay still; and they, ascribing this to his being drunk, let him lie, and played on. It was only on the

entrance of another person that he was found to be dead, with a knife in his heart, and a piece of paper, through which it had been thrust, interposed between the murderer's hand and the blood. The skill, boldness, and success of the deed produced deep and universal horror. People trembled at the possibility of such a murderer being in the midst of them, and taking any life that he chose. But the wretch's own terror may be inferred from the fact that in a few months the large notes, of which most of the booty was composed, were found hidden in the grounds of Bellevue. Some persons were suspected, but none on any satisfactory ground; and, according to a strange craze or ambition not unusual in such cases, several charged themselves with the crime, who, to an absolute certainty, had nothing to do with it."

From interest.

§ 793. Confessions, also, may be self-serving, and if so, they are valueless. When they would promote an end, they lose all evidential value.[1] Under this head fall the confessions of the alleged paramours of Anne Hyde, Duchess of York, who, under the belief that in this way they would please Charles II., falsely confessed to adulterous intercourse with the duchess.[2]

From morbid excitement.

§ 794. The English common law wisely refuses to admit in evidence confessions made under the influences of promises or threats. It has not been so careful, however, in guarding against morbid influences which may elicit confessions in themselves untrue. In the life of Sir Christopher Wren, published in 1881, we have the following:—

"In the parish of Haseley is the manor of Ryecote (or Ricot), which by marriage had become the property of Sir Henry Norris, Queen Elizabeth's ambassador to France, whom she created Baron Norris (or Norreys) of Ryecot, and whose descendants, now the Earls of Abingdon, possess the manor to this day. During Dr. Wren's incumbency a strange event took place. Among the retainers of Lord Norris was an old man who had charge of the fishponds; he had one nephew, who was the heir of all his uncle's possessions and savings. The nephew enticed the old man out one night, waited till he fell asleep under an oak tree, murdered him by a blow on the head, dragged the body to one of the ponds, tied a great stone to the neck, and threw the corpse in. There it lay

[1] Wh. Cr. Ev. 8th ed. § 627.

[2] See, also, Shillito's case, Alb. L. J. Oct. 28, 1880.

five weeks, during which time Lord Norris and all the neighbors wondered what had become of the old man. At length the body was found by the men who were about to clean the pond, and were attracted to the spot by the swarms of flies; they raised the corpse with great difficulty and recognized it. The stone tied to the neck was evidence of foul play, though no one could guess at the murderer. Lord Norris, in order to detect the criminal after the usual manner, commanded that the corpse, preserved by the water from the last extremity of decay, should on the next Sunday be exposed in the church-yard, close to the church door, so that every one entering the church could see and touch it. The wicked nephew shrunk from the ordeal, feigning to be so overwhelmed with grief as to be unable to bear the sight of his dearest uncle. Lord Norris, suspecting that the old man had been murdered by the one person whom his death would profit, compelled him to come, and to touch with his finger, as so many had willingly done, the hand of the dead. At his touch, however, 'as if opened by the finger of God, the eyes of the corpse were seen by all to move, and blood to flow from his nostrils.' At this awful witness the murderer fell on the ground and avowed the crime, which he had secretly committed and the most just judgment of God had brought to light. He was delivered to the judge, sentenced and hung."

Now, as a matter of fact, the accidental bleeding of a dead body when touched might throw an innocent party into such a convulsive tremor as to produce an untrue confession. A true confession, however, may be elicited by terror under a sense of supernatural imposition. Mr. Saville in his work on Apparitions[1] gives us the following:—

"In the year 1730, when Mr. Harris was in London, he received a letter from his confidential servant, informing him that the house had been broken into at night, and that a lad who had lately been taken into service had mysteriously disappeared. Mr. Harris immediately left London for his seat in Devonshire, and on his arrival was told that no alarm had been given on the night of the robbery until the morning, when a window opening on the lawn was discovered to have been broken through, and footstep marks discovered outside. Morris, the butler, was found in the plate-room, half-

[1] London, 1874.

dressed, tied to a table, and with a gag in his mouth. His own account of the robbery was that, having been roused by some noise in the middle of the night, he had got up and gone down to the plate-room, the door of which had been previously forced; that he was there seized, gagged, and bound before he could escape, or even call for help; and that there were five or six men altogether, none of whom he recognized, except the lad lately taken into service, who had disappeared since that night.

"In those days there were no telegraph wires, no means by which a criminal fleeing from the scene of his crime could be outstripped by that wondrous machinery which elicited the remark of the silent traveller, 'Them's the cords that hung John Tawell,' and no detective or rural police. A week had elapsed before Mr. Harris could reach his home. In the mean while the village constables had attempted to trace out the robbers, but without success. No clue to the missing plate or the thieves could be discovered. After making a careful and strict search of the premises, Mr. Harris returned to his court duties in town, giving up all hope of finding either his lost property or the criminals.

"Some six months passed away before Mr. Harris again visited his country seat, where he was received by Morris, and found everything in its usual state, nothing more having been ascertained about the robbery. Tired with his long journey from town, Mr. Harris retired early to bed, and soon fell into a sound sleep.

"In the middle of the night he suddenly awoke—as he himself was always wont to declare on relating the incident, he was in an instant thoroughly wide awake, how or why he never could explain—and he saw by the light of a small lamp burning in his room the lad who had disappeared on the night when the plate was stolen standing at the foot of the bed. Mr. Harris asked what he wanted at that time of night. The boy beckoned to him, but made no reply. Again he asked him for what purpose he had come, and again the boy beckoned to him, and pointed to the door.

"Mr. Harris was as devoid of fear as most men; so he rose from his bed, partly dressed himself, took his sword under his arm, and then followed the lad, still beckoning and pointing with his arm out of the room. His own statement subsequently of his feelings was that he was in doubt as to whether the lad was alive or an apparition; that he felt no fear, but only a strong desire and deter-

mination to see the matter to an end. The two went down the staircase, and through a side door, which Mr. Harris remembers to have been, to his astonishment, unlocked and open; they passed into the park.

"The lad led the way for about a hundred yards towards a very large oak, the trunk of which was surrounded and almost hidden by low shrubs and bushes, which had been allowed to grow wild from time immemorial. Here the lad stopped, pointed to the ground with his forefinger, and then seemed to pass towards the other side of the tree. It was not a dark night, and when Mr. Harris followed, as he immediately did, the lad had vanished from his sight. It seemed useless to search for him; and after a little while Mr. Harris returned to the house, fastened the door as he let himself in, and went to his room for the remainder of the night.

"Before the dawn he had resolved on his course of action, and having made his arrangements, he first had the butler, Richard Morris, taken into custody. He then set workmen to dig round the oak tree, who, after a short search, came upon the body of the lad, buried in his clothes, scarcely a foot below the surface. It was evident that his death was occasioned by strangulation, as the cord was still fastened tightly round his neck.

"The butler, after attempting at first to deny having had any hand in the business, soon made a confession of the whole affair. He had two accomplices to help him in the robbery, who had carried off the stolen plate to Plymouth, but being interrupted by the lad whilst removing it, they had murdered him, and buried his body under the tree, where it was subsequently discovered in the way related above. They then proceeded to tie and gag the butler, as he was found in the pantry. The murderers were never traced, and so escaped the penalty of their crime; but Morris, the butler, was tried at the ensuing Exeter assizes, and, having pleaded guilty, was condemned and executed."

The dream of Mr. Harris, supposing it to be accurately given above, may be explained on the ground of long brooding on his part over the robbery and the disappearance of the lad. That among the myriads of dreams on that particular night one should have hit upon the truth with regard to a current conspicuous transaction, is not strange. And it is much less strange that the butler, under the shock of this apparently supernatural interposition,

should have divulged the secret with which his conscience was oppressed.[1]

From nervous derangement.

§ 795. Peculiar scrutiny should be applied to confessions of adultery made by women when under peculiar nervous or physical excitement. The circumstances that led to Mrs. Tilton's confession, as brought out in the suit against Mr. Beecher, and the weight to be attached to that confession, have been the subjects of the copious criticism of eminent counsel on both sides of that remarkable trial. But whatever may be said as to that particular case, there can be little doubt that the confessions of Mrs. Burch, as put in evidence in the Burch divorce case, were the result of certain insane delusions on her part, produced by morbid excitement, into which she was thrown by her husband's treatment.[2] And the same criticism may be applied to

[1] The *Pall Mall Gazette*, in an article published in 1875, gives the following :—

"A murder committed three years ago at Adrianople has lately been brought to light under singular circumstances. The victim was a Cretan trader, who came to seek his fortunes at Adrianople, bringing with him a capital of £800. Instead, however, of gaining a fortune with this amount, it cost him his life, for it tempted the keeper of a khan where he lodged, named Yovantcho, to plan his assassination. Yovantcho, who was of a confiding nature, imparted this scheme to two intimate friends and to his servant, who readily entered into the spirit of the affair. The Cretan trader was therefore invited to a supper, which was served in the Bulgarian school, where, having been hospitably plied with wine till he became drunk, he was garroted and strangled. His body was then pitched into a well, and thus closed the evening's entertainment. The murdered man had a son, who, strange to say, observing the mysterious disappearance of his father, gave notice of the fact to the police; but, as is not uncommon in murder cases even in this country, even 'the most active and intelligent' officers of the force failed to discover the culprits. The matter was soon forgotten, and probably would have remained forever buried in oblivion, but that Yovantcho's servant the other day killed a man in a tavern, and was arrested. For some time his master sent him daily a supply of luxuries not to be found in the prison bill of fare, but at last imprudently discontinued this delicate attention. The imprisoned servant, grieved at his master's ingratitude, told to the vali the story of the murder in which he had borne an humble part. The well of the Bulgarian cemetery was immediately emptied and searched; the bones and some of the clothing of the missing Cretan trader were discovered. Yovantcho and his two friends were arrested; they are now on their trial, and some interesting revelations are expected touching the fate of other persons besides the trader who have at various times mysteriously disappeared."

[2] Donavan's Modern Jury Trials, N. Y., 1881, p. 523.

Mrs. Dalton's confession, as put in evidence in the famous divorce case in which she was defendant, and which was the occasion of one of the most brilliant speeches of Mr. Choate.[1]

From alleged supernatural possession.

§ 796. Somewhere between sane and insane delusions may be classed those of witches. So far as concerns the spiritual sin, they had no doubt a foundation of fact. The loosest deist will admit that there are exterior agencies, in the shape of temptations, which assault the human heart, and with which it is a sin to tamper. The Christian ascribes these temptations to the direct agency of Satan. Now let us suppose the temptation of jealousy. A rival is hated, and his death vehemently agonized for. Here is a positive sin of the heart. Let the law ascribe this—as the common law did and does—to the instigation of the devil; and let a tampering with this temptation, as a sort of commerce with the evil one, be made a specific offence, as it once was. And add to this the spites arising from the petulance of old age. Here you have a series of subjective crimes which may be confessed with truth.

But the witches did not stop here. They confessed to all sorts of consequential overt acts. Their machinations had taken effect. Infants had melted away before their evil eye, as wax before the fire. The old had withered and wrinkled as the same glance fell on them. Hearts which loved were alienated—hearts that believed were made to curdle in unbelief. Mothers dropped their untimely fruit. The warrior's courage forsook him in battle. Cattle took sick, and pains, through the witches' magic, tore and wrung the frames of those who crossed the witches' path.

Not necessarily insane.

§ 797. Now many of these confessions were the result of mere insanity. But it would be wrong, however, not to recognize in others of them incidents of that divine economy which permits a superstitious foreboding and sometimes monomaniac realization of the consequences of crime, among the results of the criminal conception. The mind that revels in intended guilt is apt, in the delirium of remorse, if it be not in the development of the imagination under the fever of a wounded conscience, to see the consequences which that guilt would have

[1] Great Speeches by Great Lawyers, New York, 1881.

produced. There is never an entire orphanage of the deed from the intent. There are few who cannot recall waking in an agony of terror at the picture brought before them in a dream, of the consummation of some unlawful purpose. They *dreamed* they did the thing over which they were brooding, but from which they were held back by want of opportunity or fear of consequences.

Retributive element in secret sin.

§ 798. Now the policy which permitted the execution of these poor wretches, without proof of a *corpus delicti*, was, no doubt, barbarous and wrong. But this should not lead us to refuse to recognize, as a part of the divine economy of rewards and punishments, this very self-punishing incident of that criminal purpose on which the mind has consciously and determinedly revelled. The intent brings its phantom consequences with it. Sometimes they continue phantoms, but they do not the less torture or degrade the mind they haunt. They may torture it by the presence of a tribe of avenging shades, or they may degrade it by introducing into it a progeny of foul and polluted consciousnesses. The monastic system has brought many witnesses to this. So it was with the phantoms of sensuality of Jerome, and the phantoms of pride of Simon Stylites. Wilkie, in one of his drawings, brings before us—and no one who has studied it can forget it—a copy of a Spanish picture, where a young monk, feverish and macerated with the internal gnawings of a brood which had been hatched in his heart in the heat of mere permitted conceptions, appeals for pity and solace to an aged confessor; and the agonized expression of the suppliant, and the sad, wise sympathy of the confessor, tell the story but too plainly. But the story is not one of the confessional alone, but of every heart which, before whatever throne, pours forth the burden of the sin of pampered desire. And every lunatic asylum bears witness to the same fact that in the cases of imbecility in which unexecuted purposes of sin—purposes which had only been thought over, but at the time nursed—are babbled out, and with all their coarse consequences told by the tongue of old age. The muscular hand of youth kept the curtain down, and the secret though nourished sin was thus concealed. But when the power of self-restraint weakened—when the cords and rings of the curtain decayed—then the secluded contents of the heart—these unexecuted sins, now exhaling phan-

toms by their very exposure—rise and spread themselves in their deformity before the public gaze. Sometimes overt acts follow, and we hear of sudden falls in old and heretofore unblamed men—falls, however, which were not sudden, for there were back-stairs in the heart down which the culprit had been for years descending. Sometimes the act is one of imagination only, but is talked out in the gross familiarity of senility. But, however this phenomenon may exhibit itself, it is a part of that grand system of Providence, by which guilt is lodged in the *intent*, and by which, as a compensation for human law, which judges of the overt acts alone, the intent incloses in itself its own retribution. The thing is patent in the history of society, and is meant to be so, as a mark of the divine purpose—as a deterrer—as an avenger—as an element to be received into consideration in adjusting the balance of human jurisprudence.

From mania.

§ 799. But there are cases in which these delusive confessions may be the offspring of pure mania, though in such the delusion must be proved by the mania, not the mania by the delusion. Bunyan speaks of such a case, half pityingly, half doubtingly:—

"Since you are entered upon stories, I also will tell you one, the which, though I heard it not with my own ears, yet my author I dare believe. It is concerning one old *Tod*, that was hanged about twenty years ago or more, at *Hartford*, for being a thief. The story is this: At a summer assize holden at *Hartford*, while the judge was sitting upon the bench, comes this old *Tod* into the court, clothed in a green suit, with his leathern girdle in his hand, his bosom open, and all in a dung sweat as if he had run for his life; and being come in, he spake aloud as follows: '*My lord*,' said he, '*here is the veryest rogue that breathes upon the face of the earth; I have been a thief from a child; when I was but a little one I gave myself to rob orchards, and to do other such like wicked things, and I have continued a thief ever since. My lord, there has not been a robbery committed this many years, within so many miles of this place, but I have either been at it or privy to it.*' The judge thought the fellow was mad; but after some conference with some of the justices, they agreed to indict him, and so they did, of several felonious actions, to all of which he heartily confessed guilty, and so was hanged with his wife at the same."

"I murdered my wife, some years ago," says the inmate of an insane asylum to a visitor. "It is necessary that I should be placed here in confinement." And then the supposed murderer goes on to relate with great equanimity and circumstantiality the details of the murder. But the wife was not murdered at all, and is still alive.

So the publication of a conspicuous homicide is apt, as we have seen, to generate a series of pretenders to the honor of being the perpetrator. Why should there not be several Charlotte Cordays among a thousand patients, as well as several Robespierres?

§ 800. Then comes the epidemic confession—the strangest of all. We have several instances of this in the German monkish chronicles of the twelfth and thirteenth centuries. True purposes, as well as feigned facts, are often thus confessed. Whole communities, acting under that singular fascination which mind in the aggregate often acquires over mind in the individual, have thus come forward in sackcloth and ashes and accused themselves sometimes falsely of the act, sometimes perhaps truly of the intent. Nor are these epidemics peculiar to a superstitious age. Dr. Southwood Smith, in his lectures on Forensic Medicine, brings an instance in the present century. Captain Pigot, during the naval struggles between France and England under the empire, commanded the Hermione frigate. A mutiny took place, and he and a portion of his officers were murdered very barbarously. "One midshipman escaped, by whom many of the criminals, who were afterwards taken and delivered over to justice, one by one, were identified. Mr. Finlaison, the government actuary, who at that time held an official situation at the admiralty, states: 'In my own experience I have known, on separate occasions, more than six sailors who voluntarily confessed to having struck the first blow at Captain Pigot. These men detailed all the horrid circumstances of the mutiny with extreme minuteness and perfect accuracy; nevertheless not one of them had ever been in the ship, nor had so much as seen Captain Pigot in their lives. They had obtained by tradition from their mess-mates the particulars of the story. When long on a foreign station, hungering and thirsting for home, their minds became enfeebled; at length they actually believed themselves guilty of the crime over which they so long brooded, and submitted

From epidemic influence.

with a gloomy pleasure to being sent to England in irons for judgment.'"

§ 801. Finally we may notice confessions from weariness of life—

"I am foot-sore, and very weary,
And I travel to meet a friend."

From weariness of life.

That friend is death, and the frame of mind which thus seeks it is very apt to engender phantoms of blood-guiltiness which soon appear as realities. Thus, cases have not been unfrequent where women, deserted by those in whom they trusted, and sick of living, have accused themselves, and this perhaps sincerely though falsely, of the murder of infants whom they never bore, or who died naturally. By one, who was thus life-weary, was the whole scene described with the most touching minuteness—the wailing of the young child—its piteous look—its burial in a little grave under the matted and crisp spires at the foot of a pine. Yet no one had been buried there, nor had the mother aught to do with the child's death.

§ 802. In this line may also be noticed a false confession as a congenial method of suicide. Death is sought in a way which may best correspond to the then morbid condition of the brain; in a way which involves others, though innocently on their part, in the self-murder, and makes them strike the blow. "I fling myself, not into the river, nor into the abyss, but upon the scaffold." Thus Lord Clarendon tells us of a Frenchman, named Hubert, who was convicted and executed on his confession of having occasioned the great fire in London, "although," says that sagacious jurist and historian, "neither the judges nor any one present believed him guilty, but that he was a poor, distracted wretch, weary of life, and who chose to part with it in this way."[1]

As a mode of suicide.

§ 803. Before a confession be acted upon, therefore, it should be exposed to the tests which have been above mentioned. Let it be remembered, to sum up in the words of a great civilian, that "there sometimes lurks, under the shadow of an apparent tranquillity, an insanity, which impels men readily to accuse themselves of all kinds of iniquity. Some, deluded by their imagination, suspect themselves of crimes which they have never committed. A melancholy temperament, the *tædium*

Sanity a condition of reliability.

[1] Continuation of Lord Clarendon's Memoirs, written by himself, p. 352.

vitæ, and an unaccountable propensity to their own destruction, urge some of the most false confessions; whilst they were extracted from others by the dread of torture, or the tedious misery of the dungeon."[1]

Corpus delicti to be proved.

§ 804. The last motive rarely exists among ourselves, but the first may be not infrequent. The first precaution is to have absolute proof of the *corpus delicti*. This, however, is not enough. There may be abundant proof that a crime was committed, and yet the confession may be false. We must exact proof that connects the supposed criminal with the actual crime. We must examine into his condition of mind, and see how far insanity, or remorse, or bravado, or weariness of life, or delusion may have influenced him. When these tests are applied, we are ready to take the confession as impressed with its true significance. It thus becomes a definite form of proof.[2]

[1] Hein. Ex. 18, § 6. The subject, in its technical relation, is examined at large in Wh. Cr. Ev. 8th ed. §§ 753 *et seq*.

[2] "To guard against false confessions," says Jeremy Bentham, "the two following rules ought to be observed:—

"1. One is, that, to operate in the character of direct evidence, confession cannot be too particular. In respect of all material circumstances, it should be as particular, as, by dint of interrogation, it can be made to be. Why so? Because (supposing it false) the more particular it is, the more distinguishable facts it will exhibit, the truth of which (supposing them false) will be liable to be disproved by their incompatibility with any facts, the truth of which may have come to be established by other evidence. The greater the particularity required on the part of the confession, the greater is the care taken of the confessionalist—the greater the care taken to guard him against undue conviction, brought upon him by his own imbecility and imprudence.

"2. The other rule is, that, in respect of all material facts (especially the act which constitutes the physical part of the offence), it ought to comprehend a particular designation in respect of the circumstances of time and place. For what reason? For the reason already mentioned: to the end that, in the event of its proving false (a case not impossible, though in a high degree rare and improbable), facts may be found by which it may be proved to be so. 'I killed such a man' (says the confessionalist, mentioning him) 'on such a day, at such a place.' 'Impossible' (says the judge speaking from other evidence), 'on that day neither you nor the deceased were at that place.'

"But time and place are both indefinitely divisible. To what degree of minuteness shall the division be endeavored to be carried for this purpose? A particular answer that shall suit all cases cannot be given. The end in view, as above stated, must be considered, and compared with the particular circumstances of the case, in regard to either species of extension, ere the degree of particularity proper

2. *Nervous tremor.*

Nervous tremor often consequent on sense of guilt.

§ 805. The Countess of Somerset, when arrested on the charge of the murder of Sir Thomas Overbury, laughed off the possibility of guilt with that fascination which so eminently belonged to her. It was hard to believe that underneath that young and beautiful brow, so cruel and artful an assassination could have been planned. No alarm was shown, no cloud of manner by which the slightest trouble of conscience was betrayed. So she bore herself until she found she was to be taken to the Tower. There Sir Thomas Overbury, himself but a young man, and one whom she had frequently and kindly met, had just died in unspeakable torments. There she had sent, under the guise of kindness, the poisoned tarts which caused his death. One great terror grew over her—that she should be taken to his room—that she should have to pass lonely nights there, and in that bed. At last her nerves, wrought up to their highest dissimulation, snapped asunder. She sank prostrate and wretched to the ground, and then followed her confession.

From this nervous tremor arose the habit we have already noticed, of requiring supposed criminals to touch the corpse of the murdered man. With this was no doubt joined a superstition that the corpse would bleed when it felt the murderer's hand. But this was but collateral to the belief that in this way the conscience of the guilty party would be exposed to a test which might prove efficacious. It is true that when the criminal has time to nerve himself for the purpose, he is able, if he has much courage of manner, to bear himself calmly and impassively. This was the case with Major Strangways, in 1657, who, on being required to take the deceased by the hand and touch his wounds, did so with a

to be aimed at by the interrogatories can be marked out. Under the head of time, the English law, in the instrument of accusation, admits of no other latitude than what is included in the compass of a day. The nature of things did not, in this instance, render uniformity impossible; the parts into which time is divided are uniform and determinate. Place—relative space—is not equally obsequious; the house? yes; if the supposed scene of the supposed transaction be a house; the street? yes; if the scene were in a street; but a field, a road, a common, a forest, a lake, a sea, the ocean; any of these may have been the scene." (Bentham, Rationale of Jud. Ev., Book v. chap. vi. § 3.)

demeanor undisturbed. It is true, also, that others, by a powerful effort of nervous imagination, may fling themselves into the character of an innocent person, in the same way that Mrs. Siddons could fling herself into the character of Queen Catharine, or Talma into that of Hamlet. "You looked as if you were really metamorphosed, and not merely trying to appear so." "I *made* myself believe that the audience was divested of all flesh—mere spirits, and I a spirit speaking to them," was Talma's reply. But this leap requires some little breadth of base from which to start. The mind cannot rise up to it suddenly. The murderer who might, if a due interval be given, nerve himself to the work, often collapses if suddenly brought in contact with the deceased. The old result is reversed; for in former times it was the dead man that gave sign; now it is the living. An English case to this effect has been already noticed. Another is reported in this country. A man named Johnson, under trial for murder in New York, in 1824, was taken out of his cell to the hospital by the high constable, and required to touch the murdered body. He did so, but the touch broke the texture of the murderer's dissimulation. He fell into a nervous tremor, which resulted in a confession. This confession, when he recovered, he sought to retract; and his counsel endeavored to exclude it in court, on the ground that it had been improperly obtained. But the judges overruled the objection, without in any way objecting to the process.[1]

§ 806. William Peterson, a young man of only about nineteen, but of the most extraordinary self-control, was charged, in the Memphis District, Tennessee, in 1852, with the highway robbery and murder of Thomas Merriweather. No feature, in this very remarkable case, is more remarkable than the mastery over his nervous system which had been obtained by this young but desperate criminal. An almost girlish delicacy and fairness of skin and features covered an iron energy of muscle and nerve that was able to brace itself against any expected attack. Yet even this power gave way. Closely resembling the murdered man—so closely as to produce mistakes between the two—was his brother, William Merriweather. The prisoner, not knowing he was suspected, was lying asleep in his bed near midnight. His chamber

Peterson's case.

[1] People *v.* Johnson, 2 Wheeler's C. C. 378.

was suddenly entered by the officers charged with his arrest. He betrayed no sign, though the slight trembling of the eyelids showed that his sleep was feigned. "I will go with you readily," and he got up quietly to meet the charge. But suddenly his eyes fell on a figure which may well have recalled to him the dead man, for there, darkened in the background, stood William Merriweather, pale and corpse-like, in the exhaustion and excitement of his long search for, and final discovery of, his brother's murderer. It was as if the dead and living were confronted. Then, as in former cases, the living broke down. Peterson's composure could not stand the trial. The policy of his intended defence was that he did not know the deceased; but as he looked at the brother his "head dropped upon his breast, and he sighed deeply." A partial confession and a conviction followed.[1]

§ 807. The following incident is given in Parton's Life of Burr. On a trial for murder, the prisoner was defended jointly by Colonel Burr and General Hamilton. "At first, the evidence against the prisoner seemed conclusive, and I think Burr himself thought him guilty. But as the trial proceeded, suspicions arose against the principal witness. Colonel Burr subjected him to a relentless cross-examination, and he became convinced that the guilt lay between the witness and the prisoner, with the balance of probability against the witness.

"The man's appearance and bearing were most unprepossessing. Besides being remarkably ugly, he had the mean *down* look, which is associated with the timidity of guilt. Hamilton had addressed the jury with his usual fluent eloquence, confining his remarks to the vindication of the prisoner, without alluding to the probable guilt of the witness. The prosecuting attorney replied, and it was now Burr's province to say the last word for the prisoner. But the day had worn away, and the court took a recess till candlelight. This was extremely annoying to Colonel Burr, as he meditated enacting a little scene, to the success of which a strong light was indispensable. He was not to be balked, however. Through one of his satellites, of whom he always had several revolving around him, he caused an extra number of candles to be brought into the court-room, and to be so arranged as to throw a strong light upon

[1] See this case reported, vol. ii.

a certain pillar, in full view of the jury, against which the suspected witness had leaned throughout the trial. The court reassembled, the man resumed his accustomed place, and Colonel Burr rose. With the clear conciseness of which he was master, he set forth the facts which bore against the man, and then, seizing two candelabras from the table, he held them up towards him, throwing a glare of light upon his face, and exclaimed :—

" ' Behold the murderer, gentlemen !'

" Every eye was turned upon the wretch's ghastly countenance, which, to the excited multitude, seemed to wear the very expression of a convicted murderer. The man reeled, as though he had been struck ; then shrunk away behind the crowd, and rushed from the room. The effect of this incident was decisive. Colonel Burr concluded his speech, the judge charged, the jury gave a verdict of acquittal, and the prisoner was free."

§ 808. The longer the prior tension the more sudden and complete the crash. When Dr. Webster was brought by the police to the medical college, where for so many days he had with great external composure been covering up the proofs of his guilt, his whole system, at the recurrence of the scene under these new auspices, gave way. " He seemed," said one of the witnesses, " like a mad creature. When the water was put toward him, he would snap at it with his teeth, and push it away with great violence, without drinking, as if it were offensive to him."[1] " Dr. Webster appeared to be very much agitated," says another ; " sweat very much, and the tears and sweat ran down his cheeks as fast as they could drop."[2] " The perspiration was so excessive as to wet through his clothing."[3] Webster's case.

§ 809. Richard Weston was sub-keeper of the tower at the time of the poisoning of Sir Thomas Overbury. He was the first person tried for that crime. When the bill of indictment was returned, as we learn from Mr. Amos's " Great Oyer," all eyes were turned to the bar, where the wretched prisoner was brought up. He was a man of about sixty years of age. His forehead was wrinkled with age, his hair sprinkled with gray. His countenance, though not wanting in a certain degree of Weston's case.

[1] Bemis's Report of the Webster Case, p. 60.

[2] Ibid. pp. 120, 121.

[3] Ibid. p. 193.

comeliness, had a stern and grim expression, and was now distorted with terror. His face was deadly pale, his lips quivered, and his knees tottered as he stood at the bar while the indictment was read. It charged him with having murdered Sir Thomas Overbury in the Tower of London by administering various poisons—rosalgar, white arsenic, and mercury sublimate—on four different occasions. The prisoner was then asked, in the usual form, whether he was guilty of the murder, yea, or no. The poor wretch, instead of answering, became agitated, and in his distress screamed several times, "Lord have mercy on me; Lord have mercy on me." At length he stammered out, "Not guilty." But, when asked how he would be tried, instead of answering in the usual form, "By God and my country," he exclaimed he referred himself to God—he would be tried by God alone. And though the chief justice spent an hour in persuading him to put himself upon his country, he could get no other answer out of him than that he referred himself to God.

Queen Elizabeth.

§ 810. The Earl of Essex was the last favorite of Queen Elizabeth. Young, brilliant, of remarkable fascination both in person and mind, he held, on the queen's affections, hereditary claims of which his personal graces may well have reminded her. For—except the two Careys—he was her only male relative on her mother's side; and, as she looked on his handsome person, and studied his ardent though inconsistent character—bold, rather than courageous—dashing, but inconsequent—chivalric in bearing, yet not always generous in heart—she could not but recognize the defects as well as the graces of her kinsmen of the Boleyn blood. Then, besides, his father had served her at the time when her faithful servants were few, and it was one of her principles ever to be true not only to those who had been true to her, but to their children. But even Elizabeth's constancy might be overstrained. To almost more than womanly weakness in domestic life, she added more than masculine severity in matters of state. She became piqued with Essex's waywardness to her personally, and permitted herself, upon his failure in his Irish campaigns, not only to rebuke but to degrade him. The favorite was stung to the quick, and rushed into a desperate scheme to forcibly change the administration. He was tried and sentenced to be executed. Then came with her the struggle. Whatever may have been her relations to him, she loved him still too affectionately, and had, by her indul-

gence, given too large a margin to his excesses, to permit her to consent to his death. That he should die she never intended. But with that singular and cruel waywardness by which her Tudor blood and her woman's caprice were alike shown, her plan seemed to have been to have humbled her favorite until she brought him to her feet as a devoted suppliant, once more to be fastened to her person, as one who first could give life and then renew prosperity. To this plan one thing was needed on Essex's part. Elizabeth had given him a ring which he was to send to her whenever he was in straits, and which, she had given him her word, should bring back from her a free pardon. The death-warrant had issued, and she passionately waited for the ring. She recalled the warrant to give more time, but no sign was made by Essex. The sentence of his peers hung over him—he asked not to have it remitted—and at last the queen let the axe fall.

Two years passed of eminent prosperity. The Spaniards were finally repulsed, the Irish subdued, a firm alliance was secured with France, and England was placed at the head of the Protestant powers. Elizabeth had apparently deadened all recollection of Essex. But on the death-bed of the Countess of Nottingham, a scene took place which brought back the old love with all the additional powers of remorse. It appeared that Essex had reserved the ring for his last extremity, and then had given it—to follow Hume's incomparable narrative—" to the Countess of Nottingham, whom he desired to hand it to the queen. The countess was prevailed on by her husband, the mortal enemy of Essex, not to execute the commission; and Elizabeth, who still expected that her favorite would make this last appeal to her tenderness, and who ascribed the neglect of it to his invincible obstinacy, was, after much delay and many internal combats, pushed by resentment and policy to sign the warrant for his execution. The Countess of Nottingham, falling into sickness, and affected with the near approach of death, was seized with remorse for her conduct; and, having obtained a visit from the queen, she craved her pardon, and revealed to her the fatal secret. The queen, astonished with this incident, burst into a furious passion. She shook the dying countess in her bed; and, crying to her *that God might pardon her, but she never could*, she broke from her, and thenceforth resigned herself over to the deepest and most incurable melancholy. She rejected all consolation. She

even refused food and sustenance; and, throwing herself on the floor, she remained sullen and immovable, feeding her thoughts on her afflictions, and declaring life and existence an insufferable burden to her. Few words she uttered, and they were all expressive of some inward grief which she cared not to reveal. But sighs and groans were the chief vent which she gave to her despondency, and which, though they discovered her sorrows, were never able to ease or assuage them. Ten days and nights she lay upon the carpet, leaning on cushions which her maids brought her; and her physicians could not persuade her to allow herself to be put to bed, much less to make trial of any remedies which they prescribed to her." And then came death.

Inference from instinctive faltering or self-inflicted wounds.

§ 811. Wounds or mutilations self-inflicted for the purpose of turning on others an alleged crime, are peculiarly open to the same criticism. They are inflicted usually with a faltering hand; and, even when this is not the case, they can only operate within a certain range, and under limitations which point to the cause by which they are produced.[1] We have an illustration to this effect in the narrative given by Mr. Curtis in his Life of Mr. Webster: "Goodridge was a person of previous good character and respectable standing, who professed to have been robbed of a large sum of money at about nine o'clock in the night of December 19, 1816, on the road between Exeter and Newburyport, soon after passing the Essex Merrimac Bridge on his way from New Hampshire into Massachusetts. Among the proofs of the robbery was a pistol-shot through his left hand, received, as he said, before the robbers pulled him from his horse, he and one of his assailants discharging their pistols at each other on the same instant. He was then, according to his account, dragged from his horse and across a fence into a field, robbed and beaten until he was senseless. On his recovery he went back to the toll-house on the bridge, where he appeared to be for a time in a state of delirium. But he had sufficient self-possession to return to the place of the robbery with some persons who accompanied him with a lantern, where his watch, papers, and other articles were found scattered on the ground. On the following day he went to Newburyport, and re-

[1] Wh. Crim. Ev. 9th ed. § 781.

mained there ill, at intervals in a state of real or simulated frenzy, for several weeks. Having regained his health, he set about the discovery of the robbers; and so general was the sympathy for him in a very orderly community that his plans were aided by the innocent zeal of nearly the whole countryside. His first charge was against the Kennistons, two poor men who dwelt in the town of New Market, N. H., on the other side of the river. In their cellar he found a piece of gold, which he identified by a mark which he said he placed on all his money, and a $10 note which he also identified as his own. The Kennistons were arrested, examined, and held for trial. He next charged the toll-gatherer, one Pearson, as an accomplice; and on his premises, with the aid of a witch-hazel conjuror, he also found some of his gold and papers in which it had been wrapped. Pearson was arrested, examined before two magistrates, and discharged. Goodridge then complained against one Taber, a person who lived in Boston. Finally he followed a man named Jackson to the city of New York, in whose house he swore that he also discovered some of his marked wrappers. The machinery of an executive requisition was put into motion, and Jackman was brought into Massachusetts, and lodged in jail. He and Taber and the Kennistons were then indicted for robbery in the county of Essex. So cunningly had this man contrived his story that the popular belief was entirely with him. The witch-hazel of his evidence probably did not disincline the populace to believe him. But it is even said that there were few members of the county bar who did not regard the case of the Kennistons as desperate. There were some, however, who believed Goodridge's story to be false, and these persons sent for Mr. Webster to undertake the defence of the accused. The indictment against Taber was nol. prossed. That against the Kennistons came on for trial at Ipswich in April, 1817. They had nothing on which to rely but their previous good character and the negative fact that since the supposed robbery they had not passed any money, nor were seen to have any, and the improbabilities which their advocate could develop in the story of Goodridge. The theory of the defence was that Goodridge was his own robber, and had fired the pistol shot though his hand.—In the power of cross-examining witnesses Mr. Webster had no superior of the day, and his reputation in this respect doubtless aided the impression which he produced

upon the jury.—There were traditions which had come over the border from New Hampshire of his terrible skill in baffling the deepest plans of perjury and fraud, which excited the jury to the closest attention to his method of dealing with Goodridge. They saw his well-concocted story laid bare in all its improbable features, while every aid was given to him by Mr. Webster to develop suggestions which could be set off against the theory that the latter meant to maintain. But when all the evidence for and against Goodridge's narrative had been drawn out, and it came to the summing up, there remained two obvious difficulties in the way of that hypothesis. One of them was that no motive had been shown for so strange an act as a man's falsely pretending to have been robbed, and charging the robbery upon innocent people; the other that the theory of Goodridge being himself a robber apparently made it necessary to believe that he had proceeded in this fraudulent manufacture of proofs to the extremity of shooting a pistol bullet through his own hand. These were very formidable difficulties, for the law of evidence, as administered in our criminal jurisprudence, very properly regards the absence of motive for an act, the commission of which depends on circumstantial proof, as one of the important things to be weighed in favor of innocence; and as to the shooting, it was certainly in a high degree improbable that a man would maim himself in order to maintain a false statement that he had been robbed and maimed by some one else. But in grappling with these difficulties, Mr. Webster told the jury that the range of human motives is almost infinite; that a desire to avoid payment of his debts, if he owed debts, or a whimsical ambition for distinction might have been at the bottom of Goodridge's conduct, and that having once announced himself to a community as a man who had been robbed of a large sum and beaten nearly to death, he had to go on and charge somebody with the act. This was correct reasoning, but still no motive had been shown for the original pretence; and if there had not been some decisive circumstances developed on the evidence, it is not easy to say how this case ought to have been decided. These circumstances make it necessary to believe that, although Goodridge had himself discharged the pistol which wounded him, he intended that result. His story was that the pistol of the robber went off at the moment when he grasped it with his left hand. *Yet according to the testi-*

mony of the physicians who attended him, there were no marks of powder on his hand; and the appearance of the wound led to the conclusion that the muzzle of the pistol must have been three or four feet from his hand, while there were marks of powder on the sleeve of his coat, and the ball passed through the coat as well as the hand. This state of evidence justified Mr. Webster's remark that 'all exhibitions are subject to accidents; whether serious or farcical, they do not always proceed exactly as they ought to do.' Goodridge, he argued, intended to shoot the ball through his coat sleeve, and it accidentally perforated his hand also. Goodridge, however, returned to the charge. Jackman was put on trial at the next term of the court, and the jury disagreed. At the second trial Mr. Webster defended him, and he was acquitted. These criminal proceedings were followed by an action for malicious prosecution, instituted by Pearson against Goodridge. Mr. Webster was a counsel for the plaintiff in this case. The evidence was now still more clear against Goodridge; a verdict for a large sum was recovered against him, and the public at last saw the fact judicially established that he had robbed himself. He left New England a disgraced man; but no clue to his motive was ever discovered. Twenty years afterwards Mr. Webster was travelling in the western part of the State of New York; he stopped at a tavern, and went in to ask for a glass of water. The man behind the counter exhibited great agitation as the traveller approached him, and when he placed the glass of water before Mr. Webster, his hand trembled violently, but he did not speak. Mr. Webster drank the water, turned without saying another word, and reëntered his carriage. The man was Goodridge."—In the same line may be mentioned the alleged self-mutilation of Whitaker, claimed to have taken place at West Point in 1880.[1]

3. *Morbid propensity to recur to scene and topic of guilt.*

§ 812. There are certain abnormal states of the nervous organism in which the propensity to commit a desperate act is almost irresistible. There are few who have not felt this when standing on a tower or on the brink of a preci-

Disclosures thus produced.

[1] See Wh. Cr. Ev. 8th ed. §§ 754, 849, where this remarkable case is more particularly examined.

pice. A strange curdling runs and quivers through the veins, an impulse to break this mystery of life, and desperately to face what stands beyond. There are few great criminals who have not borne witness to the same propensity. They are ever on the precipice-brink of discovery, and often comes this convulsive impulse, to throw themselves, blood-stained and confessing, into the chasm below. And even when this is not consummated, there is a strange fascination which makes them flit over the scene and topics. The impulse is to get as near to the edge as they can without toppling over.

Eugene Aram's case

§ 813. This impulse, working in a mind of peculiar delicacy and culture, betrayed itself in Eugene Aram's case in a series of refined and oblique allusions to acts of guilt, such as that of which he had been the perpetrator. His mind hovered and quivered over the topic, assuming and expressing itself in varied fantastic shapes, often flitting apparently away, but floating again from the same spot, as would an exhalation from some hidden pernicious mine. So showed the evidence on the trial, which is paraphrased, with extraordinary psychological accuracy, in Hood's famous poem.

Robinson's case.

§ 814. Among coarser minds the same propensity exhibits itself in the affectation of jocularity and rude jest. Thus Robinson, who was tried for the murder of Suydam, whose body was found under the front basement floor of Robinson's house, remarked, two days before the discovery, to a carpenter who found him, with a hoe, dragging the earth in the *back* basement, as if he had been getting out sand for the masons, "Here's where I was going to poke Suydam under;" adding that "he had not time to do it." This was tossed off as a joke, and may perhaps be regarded as an artifice to divert attention. But it arose more probably from a morbid propensity impelling the murderer to dwell in language on the topic which was to him at once so perilous and so engrossing.

Farrer's case.

§ 815. The same peculiarity was observable in Nancy Farrer's case. Whether or no that remarkable woman was technically responsible it is not proposed now to consider. Conceding, however, that she was insane (and to this effect went the last verdict taken in her case), she had a vein of shrewd cunning running through her which enabled her to shelter herself from suspicion during two successive groups of poisonings. There were the

same precautions as taken by other criminals to deaden surprise by intimations of the ill health of her intended victims—the same assertions of constitutional tendency to these particular symptoms. And with this there was the same subsequent hovering of the mind over the scene of guilt. Thus, after the death of "Johnny," one of the children whom she was employed to nurse, and whom she had poisoned, she was found "excited and anxious if any two were talking, to get close to them, and to wish to know what they were saying." And then came one of those strange convulsive confessions such as that in Robinson's case—confessions in which the truth is thrown out as if it were too hot for the heart to hold, and yet at the same time put forth as if it were a joke, so as to relieve the mind of him that speaks from the solitude of this awful secret, and yet not too boldly proclaim guilt. Nancy told a witness, after the death of one of the children, "how lucky she was with sick folks; they all died in her hands." The witness saying, "May be you killed them;" she said, "May be I did." "She seemed to be joking—seemed to be smiling—seemed to be very careless about it."[1]

4. *Permanent mental wretchedness.*[2]

§ 816. We may pass the case of a tender conscience, which commits a heinous act inconsiderately, or under force of strong temptation, and then is stung by bitter and enduring remorse. These cases may be said to be exceptional. We may be told, and perhaps truly, that the majority of great crimes are committed by men whose hearts are so rigid and callous as to give no sign of a troubled conscience. The sun, on the day after the crime, shines upon a face just as hard as that on which he shone the day before. Blood cannot stain a skin already black with guilt. No man is suddenly a great criminal. He becomes so, it is argued, by long and slow processes, during which all the impressible elements of the heart are hardened and solidified.

Extinction of conscience rare.

Now this may be all true, and yet common observation tells us that there are certain types of character among which *à priori* we are accustomed to look for the perpetrator of some great crime. And this rigidity of heart is one of these. This, in itself, may give

[1] Farrer *v.* State, 2 Ohio St. R. (N. S.) 64.

[2] See *supra*, § 406.

a faint though definite psychological presumption. But it is questionable whether there are any characters in which this type is permanent.

Memory permanent.

§ 817. "To my mind," says Dr. Maudsley, an eminent London physician whose prejudices are far from being in favor of supernaturalism,[1] "there are incontrovertible reasons to conclude that the organic conditions of memory are the same in the supreme centres of thought as they are in the lower centres of sensation and of reflex action. Accordingly, in a brain that is not disorganized by injury or disease, the organic registrations are never actually forgotten, but endure while life lasts; no wave of oblivion can efface their characters. Consciousness, it is true, may be impotent to recall them; but a fever, a blow on the head, a poison in the blood, a dream, the agony of drowning, the hour of death, rending the veil between our present consciousness and these inscriptions, will sometimes call vividly back, in a momentary flash, and call back, too, with all the feelings of the original experience, much that seemed to have vanished from the mind forever. In the deepest and most secret recesses of mind, there is nothing hidden from the individual self, or from others, which may not be thus some time accidentally revealed; so that it might well be that, as De Quincey surmised, the opening of the book at the day of judgment shall be the unfolding of the everlasting scroll of memory."

Conscience autocratic.

§ 818. "Something was wrong with him. My suspicion was aroused by his troubled sleep." This is the frequent answer to the question as to what put the witness first on the watch. Shakspeare makes Lady Macbeth's great secret vent itself in this way, and to attract very much the same observation from by-standers. And this, in fact, is but in obedience to one of those divine sanctions by which crime is made in part its own avenger. "There are violent and convulsive movements of self-reproach," says Dr. McCosh, "which will at times break in upon the self-satisfaction of the most complacent. Man's peace is in this respect like the sultry heat of a summer's day; it is close and disagreeable at the time, and ever liable to be broken in upon by the thunders and tempests of divine indignation. Even in the case of those who are anxious to keep their attention turned away as much

[1] Body and Mind, London, 1870, p. 21.

as possible from themselves, and as little as possible upon the state of their hearts, there will occur intervals unfilled up between the scenes that express them, and on these occasions there will be recollections called up which occasion the keenest misery. It may be after a day of selfish business, or an evening of sinful excitement, that such unwelcomed visitations are paid to them to disturb their rest, while others have buried their cares in the forgetfulness of sleep. Or it may be in the time of disease, or in the prospect of death, that the ghosts of deeds committed long ago spring up as from the grave. These gloomy fears, proceeding from conscious guilt, always rise up like a ghostly apparition, never in the sunshine of prosperity, but always in the gloom of adversity, to render the darkness more horrific."

"In other cases, the troubling of the conscience is produced, we can scarcely tell how, by the state of the nervous system, or by an accidental event, recalling the deed committed to oblivion, or by a sudden flashing of some willingly forgotten scene upon the mind, revealing, like the lightning's glare at night, dreadful depths of darkness. In regard to such phenomena we may know what are the general laws; though it may be as difficult to explain the specific causes as it is to tell the immediate cause of the raising this gust of wind, or of this cloudy atmosphere, of both of which we may know perfectly what are the general means of their production."

> "O coward conscience! how dost thou afflict me!
> The lights burn blue. Is it not dead midnight?
> Cold fearful drops stand on my trembling flesh.
> What! do I fear myself? There 's none else by."
>
> *Rich. III.* Act. v. Scene 3.

§ 819. M. Guillon relates the following remarkable case: "The Chevalier de S—— had been engaged in seventeen 'affairs of honor,' in each of which his adversary fell. But the images of his murdered rivals began to haunt him night and day: and at length he fancied he heard nothing but the wailings and upbraidings of seventeen families—one demanding a father, another a son, another a brother, another a husband, etc. Harassed by these imaginary followers, he incarcerated himself in the monastery of La Trappe; but the French revolution threw open this asylum, and turned the Chevalier once more into the world. He was now no longer able to bear the remorse of his own con- Illustrations.

science, or, as he imagined, the sight of seventeen murdered men, and therefore put himself to death. It is evident that insanity was the consequence of the remorse, and the cause of the suicide."

Mr. de Quincey, in one of the volumes of his literary reminiscences, thus speaks of a duel between Colonel Montgomery and Captain Macnamara :—

"The colonel, as is well known, a very elegant and generous young man, fell; and Captain Macnamara had thenceforward a worm at his heart, whose gnawings never died. He was a post-captain; and my brother afterwards sailed with him in quality of midshipman. From him I have often heard affecting instances of the degree in which the pangs of remorse had availed to make one of the bravest men in the service a mere panic-haunted, and, in a moral sense, almost paralytic wreck. He that, whilst his hand was unstained with blood, would have faced an army of fiends in discharge of his duty, now fancied danger in every common rocking of a boat; he made himself, at times, the subject of laughter at the messes of the junior and more thoughtless officers; and his hand, whenever he had occasion to handle the spy-glass, shook (to use the common image), or rather shivered, like an aspen tree!"

Latent consciousness of guilt involuntarily awakened by extraneous circumstances.

§ 820. Extraneous circumstances may evoke this involuntary remorse. The culprit may form around him his own atmosphere, which will impart for a while its tinge to his conduct. He may, by a powerful effort of imagination, create for himself fictitious wrongs and fictitious justification. Suddenly, however, comes a rude touch and dissolves the whole fabric. Heretofore he believed himself a hero, or an instrument of inexorable fate. Now he sees himself a murderer, cruel and loathsome, and a spasmodic cry of agony escapes his lips, or insanity, or suicide, or, what may be worse than either, a dull and incurable despair, closes his life.

The independent existence of this latent consciousness of guilt is shown by the fact that it is called into action by events over which the will has no control. It is not the creation of a diseased brain. It is not the result of a morbid self-introspection. Were it either of these, the will could recall it, or perhaps again banish it. But it is produced arbitrarily and convulsively by circumstances with which the will has nothing to do. The sudden sight of a ring belonging to one whom Queen Elizabeth had loved but sacrificed,

threw, as we have seen, that proud and self-poised woman into an agony of demonstrative remorse. The countess of Somerset, who had borne herself with such consummate self-possession and tact during the prior periods of the prosecution, screamed with terror at the prospect of being taken to sleep in the room of Sir Thomas Overbury, whom she had poisoned. Nor are these cases unfamiliar to our every-day observation. A little locket, a lock of hair, a faded rose, a ribbon, taken from the person of one who has been loved and lost, will recall a passionate torrent of long-buried grief. We may have been, a moment before, calm or buoyant. If we had been able to exercise our own will, we would have banished these memories finally. But now, without our agency, they burst upon us and overwhelm us.

§ 821. How corrosive is remorse, even when crime is undetected, is illustrated by the case of John Sadleir, whose forgeries startled London a few years ago. "A highly respectable solicitor, who was himself engaged in London, received one night from a correspondent in Dublin a telegraphic dispatch which merely said, 'All wrong about ———'s mortgage; I will write by post.' Sadleir, who saw the dispatch, immediately conceived that it alluded to one of his forgeries, and that he was on the point of being discovered. Without saying a word, he went home, and on his road purchased a quantity of essential oil of almonds; and the same night committed suicide. How great must have been the mental torture this wretched man had endured for some time previous to his committing this rash act may be judged from the fact that the coats of his stomach were impregnated with opium; and it was afterwards discovered that, from the constant use of the drug, the quantity he was obliged to take in order to procure a few hours' sleep was enough to have killed an ordinary person. For some time before his decease he seemed scarcely capable of fixing his mind for five minutes upon one continuous subject—his eye was incessantly turning with a haggard expression, and he was totally unconscious of the matter under discussion."[1] Sadleir's case.

§ 822. There is a feature, however, in respect to a consciousness of guilt thus produced, that distinguishes it from a suddenly recalled grief. The latter reproduces merely a past memory, the

[1] Good Words, 1866, p. 467.

former a present reality. The recollection of the latter is, I WAS IN TIME PAST so and so. The discovery with the former is: I AM NOW A CRIMINAL; I DID THAT DEED OF GUILT. Of this discovery there are but two or three consequences. One is confession, and the consequent relief from a comparatively unburdened conscience. Another is a continued condition of misery. A third is the stupor or hardness which is so common an attribute of old criminals. Either of these is a positive psychical condition, as much the subject of ascertainment as are the types or phases of the physical condition.

Distinction between consciousness of guilt and suddenly recalled grief

§ 823. When death is voluntarily encountered, by an intelligent man, in order to avoid the disgrace and penalties of discovered crime, it is an impressive illustration of the great ethical truth we have now under consideration. This is peculiarly the case when the death sought for this purpose is a death skilfully disguised in advance by the criminal himself, in order to preserve his reputation. The confession here is twofold; there is a confession that a wrong has been done whose discovery the wrong-doer is unable to endure, and a confession that the suicide itself is a wrong which must on its own account be covered up. The stratagems resorted to for this purpose are of peculiar importance in our present inquiry, for they are not contrived for the purpose of shielding self, since they can only, if effective, operate when the person designing them is out of the range of human censure or human discipline. They are the production, therefore, not of fear, nor of interest, but of a desire, in part, to retain a reputation heretofore untarnished, in part to save the feelings of surviving friends. In proportion to the ingenuity and complication of such contrivances, they illustrate a consciousness of the disgrace attending not merely the discovery of wrong, but the exposure of suicidal attempts to evade such discovery. The suicides which are undisguised efforts at the evasion of punishment are undoubtedly impressive confessions of guilt; but they are far less impressive than the disguised suicide, which involves the confession of the wrongfulness of the confession itself. The undisguised suicide, also, may be the work of sudden impulse, or of brutal indifference to life and reputation; not so the disguised suicide, brooded over with often protracted suspense, and in solitary agonizing deliberation and circumspection. Such a suicide is not, indeed,

Disguised suicide is a recognition of public standard of right.

a testimony to the power of conscience in the breast of the wrong-doer himself, unless we suppose him dead to the sense of justice in the world to come, and having a conscience only for this life; but it is a testimony, and that the strongest that individual recognition can give, to the existence of a public conscience which makes discovered crime a curse to the criminal himself.—In this light we notice, in detail, a remarkable case of alleged suicide which took place in the village of Dexter, Maine, in February, 1879; the facts being condensed from an elaborate report in the Boston *Daily Advertiser* of February 1, 1879:—

On the morning of the 22d of February, 1878, Mr. James Wilson Barron, cashier of the Dexter Savings Bank, left home, saying to his wife that he had business which would probably detain him until three o'clock in the afternoon; that he should not be home until then, and that he had his town report to make out, he being at the time town treasurer. He had promised to meet Mrs. A., a depositor, at the bank that morning for the purpose of settling her accounts, forgetting at the time the promise was made that the day was a holiday. Mrs. A. went to the bank at the time specified; but not finding Mr. Barron there, called upon him at his home. After some conversation, he started with her for the bank, making the remark above quoted to his wife upon leaving the house. Mrs. A.'s account amounted to $400, and upon arriving at the banking rooms, Mr. Barron informed her that there was not money enough in the bank at that time to pay her; but, that if she would accept a check for $200 he would pay the remainder in money. To this proposition she agreed; and Mr. Barron immediately left the bank, went out upon the street, and borrowed of the town tax collector the sum of $250. Of this sum $200 was given Mrs. A. in settlement of her account, the remainder being charged on the books of the bank as having been paid out on town orders. The transaction of this business occupied his time until twelve o'clock. During the afternoon Mr. H. C. Parsons, an insurance agent, who hired desk-room in the bank, was at his desk writing letters. He had occasion to leave the banking-room twice during the afternoon, but at twenty minutes of five, having finished his business, he left the room finally, leaving Mr. Barron, who had been in the bank all the afternoon, sitting upon a stool, apparently engaged in figuring. At the time Mr. Parsons left, the doors of the safe were unlocked. Upon

leaving, he locked the door leading from the bank into the corridor and started for home. As subsequent developments proved, he was the last person who saw Mr. Barron before he was found in a dying condition within the vault two hours subsequently. Between six and seven o'clock, her husband not having made his appearance, Mrs. Barron became anxious, and a search was instituted.

"A. F. Bradbury, Esq., was first visited. The efforts to secure an entrance through the door leading to the savings bank were unsuccessful. It was then suggested by Mr. Curtis, cashier of the Dexter National Bank (which is in the same building and on the same floor with the savings bank), that, as the safes of both banks were in the same vault, with only ten inches of space between them, by entering the last-named bank and opening the doors of the vault they might be able to ascertain whether or not Mr. Barron was in the adjoining room. The suggestion was acted upon. On opening the outer doors of the vault, the visitors heard heavy breathing, which evidently came from the other side of the vault.

"One of the visitors, named Crowell, forced his way into the vault of the savings bank, and reported that Mr. Barron was lying upon the floor of the vault, with his head resting upon the edge of a small trunk, with a gag in his mouth, and his hands fastened behind him with a pair of Tower's patent ratchet handcuffs. Crowell cut the string with which the gag was fastened, and with the dying man was forced through the space between the safes and into the vault of the national bank, from which he was removed to the banking-room and medical assistance summoned, which was soon obtained, the patient remaining insensible. His breathing was very heavy, and, after several fainting fits, he died at a little before five o'clock the next morning. After being removed from the vault, a slight scratch was found on the forehead, another under the left eye, and a slight purple mark under the right ear and another on the back of the neck. There was also a swelling on one side of the head, over the temple. One singular fact was that, with all the marks, there was no abrasion of the skin discovered, and not a drop of blood anywhere to be seen. There were no marks of choking upon his throat, and no evidence of any violence having been used in putting the gag in his mouth. Soon after his removal from the vault, the door leading to the savings bank was forced open, and an examination made of the outer door of the vault, which fastened

with a combination lock. This was opened by Mr. Curtis, who knew the combination, and the inner doors of the safe were also found securely locked. The questions next to be decided were, how did Mr. Barron come to his death? and how did he get into the vault?"

In solving this question the following facts are to be noted: In the room leading from the place in which the banking business was transacted, the key to the handcuffs was found; and in a pile of rubbish in one corner of this room his bunch of keys. Among them was a key to the inside door of the vault, one to the outside, or door leading into the street, a key to the door opening into the banking-rooms, keys to three doors in Masonic hall, located in the top of the building, besides several other keys belonging to different parts of the building. A door at the head of the stairs leading to Masonic hall was found open, as were also three other doors leading through the hall. A window in the rear room was found open, and the iron shutters were swung open. On the floor of this room, which was used for the storage of coal, a coal-hod was found tipped over on its side. Four feet from the coal-hod Mr. Barron's false teeth were discovered, and exactly four feet from the teeth his pen and holder were found lying on the floor. The first view of these articles seems to indicate that he was coming from the coal-bin, with the coal-hod in his hand, at the time an attack was made upon him. "In the drawers in the counter were found $15 and a few cents. On the counter was found a dividend statement which was made out on the 1st of January, settled up and carried to the accounts of different depositors. In addition to this statement the general deposit book was also found upon the counter. Besides the $15 in the money drawer, there were $100 worth of revenue stamps in one pigeon-hole in the inside safe, $15 in money in another, and $35 in still another. It was also a noticeable fact that there was no trace of thieves having been in the bank; not even a tool had been left behind by the supposed murderer or murderers."

An examination of the cash-book, as it was balanced up to that day, showed the cash account to be correct, and that on the day the supposed murder was committed there ought to have been $1600 on hand. It was supposed that amount had been taken by the robbers, as there was only $15 in the money-drawer at the

time Barron was found. Included in the $1600 was a $500 bond, which was entered on the cash-book as having been received the day previous, February 21. Detectives were employed, and on their report, proceedings were instituted against a man named Hope as concerned in the burglary. This, however, resulted in an acquittal, there being no evidence of guilt.

So strong, however, was the public feeling that Barron had died a martyr to duty that a subscription was made, mainly by the New England bankers, and four thousand dollars collected as a tribute to his family. Several important developments, however, operated to stop this movement, and dispel the theory of burglary. On the first of November, 1878, Mr. George Hamilton, the new cashier, made up his statement to send to the bank examiner, W. W. Bolster, Esq., and, never before having performed such a duty, took, as a sample, the copy of the one made by Mr. Barron on the previous year. In that copy the liabilities of the bank at that time appeared to be $218,319.11. In looking over the deposit book of that date, he discovered that on that day the actual liabilities of the bank were $220,319.11, making an apparent deficit of $2000 between the sworn statement and the actual liabilities, as shown by the general deposit book and trial balance. On making this discovery, they examined all the entries on the books from that date back to October of the same year. On the 27th of October it appeared by the trial balance, as made up by Mr. Barron, that the liabilities were $219,663.51, which showed that the deficit existed at that time. They also examined the cash books from November 1, 1877, up to February 22, 1878, the time of the supposed murder, and ascertained that, if the entries on that book were correct, there ought to have been about $1600 in the bank at that time. Among the regular entries on the book, between the two last-named dates, were found items of various amounts, aggregating the sum of $1600, which, it will be perceived, just equals the amount of money which should have been on hand at that time. A singular coincidence in connection with these entries was that they were not entered on the general deposit book, and no record of them appeared on the trial balance sheet. One of these items was under date of February 21, and recorded the purchase of a $500 United States bond; but the margin, where the number of the bond should appear, was blank. Neither did the number of

the series appear in any portion of the book. A further examination showed that loans on collateral had been made to the amount of $10,788.50, while from the general deposit book it would appear that the true amount loaned on such security was $12,789.50, showing, as before, a deficit of $2000.

Barron's last statement to the bank examiner was audited by two of the trustees, Messrs. Dastin and Abbott, and, the books agreeing with it, said statement was approved. By a more minute examination the discovery was made that the figures 1 and 8 in Barron's original statement had been erased, and the figures 2 and 0 substituted. It was further discovered that, in the sum charged to loans on collateral securities, the figure 2 had been substituted for the 0, making the sum loaned appear $12,789.50, instead of $10,789.50. These erasures and alterations had evidently been made after the statement had been audited.

Other alterations were subsequently discovered, and a Boston detective named Dearborn called in. "The first suspicious circumstance appeared to be that the trays in which the cash was kept still contained the sum of $15 when found lying upon the counter the morning after the tragedy. In the safe, inside the vault, were a number of pigeon-holes, in several of which various sums of money and other valuables were found. One contained $100 worth of revenue stamps, another $35 in bills, another $15, and still another $20. Strange as it may seem, not a single dollar was missing, and none of the papers had been disturbed. The safe doors were open, but the steel chest inside the safe, containing the bank's securities, and upon which there was a time-lock, was unmolested. These and other developments convinced the detective that the work had not been performed by thieves, and in confirmation of this belief, he failed to learn that, on the day in question, any strangers had been seen in or about Dexter, or that any strange teams had either entered or left the town. An inspection of the gag found in Mr. Barron's mouth still further served to dispel the theory of murder and robbery. The gag was not at all such a one as a professional thief would think for a moment of using, as it did not at all hinder respiration, or prevent the victim from making an outcry. The cord around Barron's neck was very clumsily contrived, and hung loosely about his shoulders, while the cord by which the gag—the wooden handle from the bail of a water-pail—was secured, proved

to be nothing but a piece of common cotton twine in three strands. Twine of this kind, it was shown, was in common use in the bank. The cord found round Barron's neck, and with which he was supposed to have been choked, could have been picked up in the bank. It should be here stated that after the discovery of Mr. Barron in the vault a window in the rear room, leading from the bank, was found open. It was subsequently shown that this window had been open all day."

Facts were developed from which it was inferred that it was impossible that the bank could in that afternoon have been entered by burglars; and the conclusion, not only of the detectives, but of the bank officers, was that the late treasurer was not only a defaulter and a perjurer, but that, with the aid of an accomplice, he had deliberately planned and executed the whole scheme in order to save himself from inevitable exposure and the disgrace which would follow. On this theory they set to work with renewed energy, Barron's accounts being $3600 short seeming to provide a substantial basis upon which to establish the theory of suicide. It also appeared that Barron's watch, chain, and pocket-book had not been disturbed. "There was in the back room a coating of dust and ashes over the whole floor quite thick. This coating was disturbed only in a direct line from the door to the coal-bin, and had there been a scuffle there (where the teeth, hod, and pen were found), there must, it is agreed, have been evidence of it. There was no dirt of any kind upon his clothes, and if he had been thrown down, with a dark suit on, there would have been plenty of it." Eminent physicians who attended the dying man united in holding that the death was caused by poison, and not by the wounds found on the body. They testified further that Barron must have entered the vault about five o'clock, and that the effects noticeable were just such as would have been caused had he taken eight or ten grains of morphia into his system. Had he taken such a dose, death would naturally have ensued in about twelve hours. They also said that if he had not taken any poison, and had been in the vault with the gag in his mouth for two and one-half hours, there would be no good reason why he should not soon revive after being taken into the air.

No *post-mortem* examination was had, the family refusing to permit it.

It has been ascertained that Mr. Barron had a quantity of drugs

in his possession at the time of this affair, and that at the top of the bank building a little room was fitted up in which he was in the habit of compounding medicines for one Dr. Fitzgerald, a clairvoyant physician, residing in Dexter. The detectives could not reconcile themselves to the idea of his having had an accomplice, who would naturally have been an interested party. The most difficult question to decide, on the hypothesis of suicide, was how Barron could have locked himself in the vault, leaving the keys where they were found: on the floor of the room outside. "In making an examination of the inside of the vault, Detective Dearborn discovered on the top of the safe a screw-driver and an old kerosene lamp, which were (so said the present cashier) found in the vault on top of the safe, after the discovery of Mr. Barron. Cashier Hamilton said further that Mr. Barron had been in the habit of using the screw-driver in removing locks, preparatory to oiling them. The finding of the lamp and screw-driver proved the key to the mystery. Upon learning this it occurred to the officers that Barron might have locked himself in the vault, and, acting upon this idea, they proceeded to experiment, with the assistance of Cashier Hamilton. After one day's experimenting the officers demonstrated that Barron could have locked himself in. On the outer door of the vault was a combination lock. This was held to the door on the inside by a cap fastened by one screw. The cap being removed, it was easy to pull the door to, shove the bolts into place with the hand from the inside, and then secure them by a finger manipulating the bolt of the lock into its proper place. This done it was easy to replace the cap. Then the door was locked, and could not be opened except from the outside, and then only by one who knew the combination. Barron had that cap off frequently, in order to change the combination, and knew all about the lock. It was claimed that this could be done by working by the light of the kerosene lamp above referred to. The second or inside door of the vault was double, opening to right and left. It had a Yale lock upon the inside of one half. When the bolt of this was thrown out it held in place upright bolts (which from the outside operated by a handle), and prevented the one from being dropped and the other from being raised. It was possible to remove this lock without a screw-driver, and then throw the bolt in the lock by means of the key. If Barron did this, there is no reason why he could not have put his keys

where they were subsequently found, and leave them there, as he could have locked this door from the inside without their further use. Having done this, he could have closed the doors, put the lock back in place, and thus fastened the door the same as if it had been done with the key from the outside. This the officers did over and over again, and this, they claim, Barron did. It was then a very easy matter to extinguish the light, and place the lamp and screw-driver where they were found—on the top of a small inner safe. Next in order, probably, came the swallowing of the poison, and the adjustment of rope and gag. To place the manacles upon his wrists was a comparatively easy task. Everything being then ready, all that remained was to lie down upon the floor and await his now inevitable doom.

"After making this, to them, important discovery, the president, cashier, and board of directors assembled at the bank, where Mr. Dearborn went through the entire operation, as described, in just four and one-half minutes. An attempt was made to trace the handcuffs, and it was learned that some six weeks or two months prior to the 22d of February last, the date of the alleged tragedy, an intimate friend of Mr. Barron, a police officer, was in the Dexter savings bank consulting Mr. Barron on a matter of private business. Incidentally the conversation turned upon the subject of bank burglaries, and the method in which they were performed. These interrogatories were propounded by Mr. Barron to his friend, whom he knew to be an officer. The opinion requested was given by the officer, so far as he possessed it, although it was a subject concerning which he had no great amount of personal information. Finally Mr. Barron spoke of handcuffs, and was shown a pair which the officer had in his possession. These he examined with great minuteness, asking a variety of questions, receiving all the explanation which the officer could give. He then tried the handcuffs upon his own wrists. He finally asked where such could be procured, and the officer told him that he knew of one place where they could be purchased, and that was at the corner of Brattle and Washington streets in Boston. The pair of manacles which the officer showed to Barron were a sample of Tower's ratchet handcuffs, and the pair found upon Barron's hands when he was discovered in his helpless condition were identical with those that the officer had shown him." It was also shown that, to have effected such a robbery by profes-

sional burglars, four men would have been requisite; while there was no proof of the presence of any strangers in the village that afternoon.

Abundant evidence was given that Mr. Barron was virtually insolvent at his death, but that his life was largely insured for the benefit of his family. The bank officials ascertained that on the 1st day of January, 1877, Mr. Barron discharged a mortgage on his house of $2000. They also found that he began covering up his tracks as far back as October, 1876 or 1877, by "doctoring" his books.

In the drawer, in Barron's desk, was found a copy of the trial of Scott and Dunlap, the Northampton bank robbers. It will be remembered that when that bank was robbed the cashier was taken from his house, gagged, handcuffed, and partially choked by a rope around his neck in order to compel him to open the doors of the bank. The supposition is that Barron imitated as closely as he could the *modus operandi* of those ruffians. By his cash book it appears that there ought to have been $520 in cash on hand, when in reality, there was much less money in the bank, as has already been stated. The theory thus presented is, that the impending disclosure of the falsity of his statement to the bank examiner in November, 1877, together with the suspension of the Newport Savings Bank the week previous, and the knowledge in his possession that the Dexter Bank could not stand a run, impelled him to the commission of the fatal deed. If the bank suspended, the examiner would be compelled to investigate its affairs. The cashier would then be exposed as a perjurer and defaulter. He stood so high in the community, having occupied nearly every position of honor and trust in the town, that the idea of being regarded as a criminal by his associates was, to a man of his sensitive temperament, unbearable. To prevent such a discovery, to secure the life insurance, and to enlist the sympathy of the public, the scheme of robbery, it was alleged, was concocted.

5. *Animosity among confederates.*

§ 824. "He knows my secret, and I must dispatch him." "Because he fears my betraying him, he will try to get rid of me." One of these feelings, and perhaps both, lurk in the breast of the confederates in almost every joint

Tendency in confederates to disagree.

secret crime. How dangerous is the possession of a political secret in a despotic government, is evidenced to us in the many assassinations by which fell the favorites of the French and English monarchs of the seventeenth century.

But another and more subtle impulse sometimes intervenes to work out the same result. It seems almost an invariable psychological rule that passionate love, producing crime, is followed by passionate hatred. Take, for instance, the reign of James I., and go to Lord Coke's great Oyer, which has been already more than once referred to. Whether or no the Earl of Somerset was really guilty of the consummated poisoning of Sir Thomas Overbury, may perhaps be doubted. It is clear, however, that his countess caused poison to be sent to the deceased to remove or punish his opposition to her marriage, and that her husband was at least privy to her designs. It is clear, also, that he must have known, if not participated in the nefarious plot by which his wife, as a preliminary to her marriage with himself, was divorced from the Earl of Essex. For by fraud, if not by bloodshed, as all England knew, was the first marriage dissolved and the second secured. To make this second marriage happy many outward circumstances conspired. The earl and his countess were each remarkable for their beauty and grace. They had wealth and station; they loved each other with a love which had torn asunder the most sacred barriers, and had conquered almost unsurmountable difficulties; but when they at last met, they found an invisible obstacle between them which they could not overcome. This was the consciousness of a common crime. Their love was followed by hatred so intense, and by quarrels so bitter, that quiet was only secured by separation. For years they lived in the same house with hearts so hostile that they instinctively shrank from each other when they met. Aversion was followed by divorce.

§ 824 *a*. The case of Udderzook,[1] a case remarkable in many other respects, furnished us with a striking instance of the inability of confederates in crime to carry out their plans harmoniously. William E. Udderzook and Winfield Scott Goss entered into a conspiracy to defraud certain insurance companies, and, having procured insurance on the life of the latter to a large amount, they

[1] Wh. on Hom. Appendix to 2d ed.

set fire to a frame shop in the city of Baltimore, in which shop Goss was known to have been working, having first placed in the shop the body of a man which bore a general resemblance to Goss. Upon the discovery of this body, they relied for a case against the insurance company, and they were not mistaken, Goss's wife, his stepfather, and his stepmother, all professing to recognize the body as that of Goss, who, in the mean time, disappeared. The fire took place in February, 1872. Mrs. Goss sued the insurance companies and obtained a verdict; in the mean time Goss, who had been living at Newark, N. J., under the name of A. C. Wilson, was induced to hide himself at Jennerville, in Chester County, Pennsylvania, in June, 1873. On the 11th of July, 1873, Gainer P. Moore discovered in "Blair's Woods," near Penningtonville, in Chester County, the body of a man "mysteriously hidden" under leaves, a thin covering of earth and the dead limbs of trees. After being viewed by the coroner, buried, and twice disinterred for examination by physicians, it was decided that this was the body of Goss, alias Wilson; and at the August sessions of the Chester County Oyer and Terminer of the same year, Udderzook was indicted by the grand jury for his murder. At the trial, the Commonwealth proved the dissimilarity between the characteristics of the body found in the burned building in Baltimore, in 1872, and those of Goss, the identity of Goss and Wilson, and the strong likeness of the body found by Moore to the appearance of Goss; several witnesses swore to certain strong points of personal resemblance, and several inanimate witnesses—a ring, bits of clothing, and the like—testified to similar effect. It was shown that, on the 1st of July previous to the murder, the prisoner left Jennerville in company with a man who bore a strong resemblance to Goss or Wilson, and reached Penningtonville alone; much other circumstantial evidence pointed to the prisoner's guilt; and he was convicted and executed. Here, then, was a case in which a conspiracy to obtain a very large sum of money—Goss's life had been insured for $25,000—was carefully planned, ably executed, and nearly carried out to a successful termination. There could be, apparently, no reason why the confederates, if the result of the suits they had procured to be brought remained unchanged, should not have divided their plunder undetected and in peace; but the rapacity of Udderzook, or his inability to come to a satisfactory agreement as to a division with Goss, led

to the murder of Goss, and the subsequent discovery of the whole dark transaction. So thoroughly imbued was Udderzook with the desire to get rid of Goss and pocket the money himself, that he went to the length of proposing to his brother-in-law, Rhoades, to induce Goss to make a journey to West Chester, and steal from him money which he pretended Goss had, offering to guarantee Rhoades $1000; and not only this, but in defiance of the most ordinary rules of caution, he wrote to Rhoades, making an appointment, and desiring him, in the most suspicious terms, to let no one know of their meeting, but to join him without fail in an enterprise in which there was, he said, "a cool $1000, and nothing to prevent us from getting in." But Rhoades having failed him, "on the evening of the same day," said Judge Butler in his charge to the jury, "after the interview with Rhoades, as night was coming on, the prisoner started, with the man by his side, in the direction of Penningtonville. Baer's woods is about nine miles from the place of starting, and in this direction the parties were going when last seen. John Hurley, who lives within a short distance of the woods, testifies that his wife in the night aroused him to hear a noise in that direction, that he distinctly heard hallooing and distinguished the voices of two individuals, but could not distinguish any expression except the exclamation, 'oh!'" Udderzook arrived in Penningtonville at twelve that night. The carriage in which he returned there was damaged and bloody. The homicide was detected by the necessary incidents of its execution; the fraud on the insurance company was detected by the exposure of the homicide.

"Honor among thieves" only when community of interest remains.

§ 825. The following striking remarks are from Mr. Hargraves's (1871) curious work on "The Blunders of Vice and Folly." "On the other hand, what is the position of the confederate? He, too, lives in constant apprehension, for he knows that his employer has the strongest possible inducement to remove him in order that he may extinguish the evidence of his guilt. He knows, also, that a man who has instigated one misdeed will not hesitate at another; and still more, he perceives that his own destruction is a condition which is essential to the secure enjoyment of the advantages arising from the original offence. And thus they stand, eyeing each other with alarm, like stags whose antlers have sometimes been found interlocked in some furious struggle, and for whom there is no release

till death arrives; for each remembers (and this is a most galling element in the transaction), that, by the very terms of the case, both are to be destitute of principle, and therefore neither can be trusted for a single instant." Among illustrations of this may be mentioned the assassination of Count Königsmark by some Italian desperadoes, whose employer, it is alleged, gave them a slow poison before they started on their errand, so as to make sure that they should not betray their secret.

"There is an old saying," continues the same author, "which assumes that honor exists among thieves. Doubtless, some measure of fellowship and freemasonry is to be found among the *chevaliers d'industrie*, whether their operations are conducted on a large or a small scale. But it is only so long as a common interest binds them together, and constrains them to unite for the avoidance of a common danger, that the slightest dependence can be placed on their good faith. The man who proves himself a traitor to the community will rarely scruple to betray his comrade whenever a fitting opportunity occurs, provided he can turn a few pounds by the transaction. From Vidocq's Memoirs we learn that the regular thieves of Paris showed no reluctance to assist the police in detecting and exposing their professional brethren; for some of them were frequently employed by the officials in unearthing culprits, and accepted the commission with pleasure, either in consideration of the reward, or in the hope of securing a little indulgence for themselves. He himself, whilst in prison, volunteered to act as a spy upon his fellow convicts, and afterwards, when set at liberty, entered into a compact with the police, at a fixed salary, to feed justice with a stated number of rogues each year, in default of which he was liable to be sent back to Brest."

§ 826. Poets have often dwelt upon this property of crime, but by no one has this been done with greater energy or fidelity to truth than by Robert Browning. Ottima, an Italian woman, pursues with the utmost passion an adulterous intercourse with a German, Sebald. Together they murder her husband. Then comes for a moment the passionate voluptuousness of guilty love in its full. But while they are still in the flush of delight at the removal of the obstacle to their undisturbed enjoyment, a country girl passes under the window singing a home song which brings them back to the reality of the crime they have committed. It is the ordinary reac-

tion produced on a morbid state of the brain by a single healthy thought. Then fierce love is followed by fierce hatred, and death by death.[1]

§ 827. "The mutineers of the Bounty, after turning Bligh and his eighteen companions adrift in a small boat in the midst of the Southern Ocean, at the distance of 3600 miles from the nearest European colony, found it necessary to forego their plan of settling down in luxurious sloth in some insular paradise, and betook themselves to a lonely rock rising perpendicularly from the deep, and accessible at one landing-place only. There they immured themselves to escape observation, turning the key of their dungeon, as it were, by burning the ship that brought them, lest it should reveal their presence; and there they wore out life, the party quarrelling among themselves and perishing by each other's hands, for only two were permitted to die a natural death."[2]

§ 828. Catharine de Medicis, on the death of Francis II., had still three surviving sons, Charles IX., who succeeded to the crown; Henry, Duke of Anjou, afterwards Henry III.; and Francis, Duke of Alençon. Over each she had acquired an ascendency which would give her supreme power could she make the crown autocratic. There was in the way of this, however, an insurmountable difficulty. The Huguenots were a co-ordinate power in the state, and their religion and their political principles alike made them intractable. Coligny was their leader, and besides this possessed military skill, popular influence, and inflexible integrity. Assassination was to Catharine the natural remedy, and in this she obtained the ready support of the chief of the Catholic party, the Duke of Guise, and then the reluctant assent of Charles IX. The blow was struck; Coligny murdered; and forty thousand Huguenots in one night destroyed.

Then came the reaction, and prominent in this was the disruption between the queen, her sons, and her accomplices. To exclude Henry of Navarre from the succession was one of the chief points in the confederacy, yet eight days after the massacre, Charles IX., according to Ranke, was obliged to summon Henry to him in the

[1] "Pippa Passes," by Robert Browning. Mr. Hawthorne's novel, "The Marble Faun," deals with the same tendency.

[2] Hargraves's Blunders of Vice and Folly. London, 1871, p. 253.

night to quiet the agonies by which he was tortured. The young king was filled with dread at a wild tumult of confused voices, among which were distant shrieks and howlings, mingled with the indistinguishable raging of a furious multitude, and with groans and curses, as on the day of the massacre. So vivid was his conviction of the reality of these sounds, that he sent messengers into the city to know if a fresh tumult had broken out. But the sounds were mere delusions, which continued to torment Charles during the short remainder of his life. Thus he died alternately cursing his mother, as the cause of his misery, and turning to her submissively, in awe of her overweening power.

So it was with her two remaining sons. Francis, Duke of Alençon, flew into open rebellion, making the massacres of which he was one of the joint agents the plea. Henry III., it is true, when he succeeded to the crown, bowing before the queen's superior genius, conceded to her for a while the supremacy. But this same restlessness under the joint load of a common guilt, this almost anguish to throw it off on her who produced it, soon severed the son from the mother. The final act was in the castle of Blois, where the Duke of Guise, almost at the foot of the throne, was obliged to defend himself by teeth and nails like a wild beast, for he had not time to draw his sword. He had been invited there by the king, as one of the counsel of state, and when there was thus massacred by his old co-conspirator. And underneath, on her dying bed, lay Catharine of Medicis, the wild tumult above giving her proof of this final dissolution of the strange partnership she had formed for the Huguenot massacre. The community of guilt had to them been indeed fatal. It had been followed by the bitterest recriminations and imprecations. It had been followed by massacres and cross massacres. Charles IX. did not hesitate to ascribe to poison administered by his mother's hand, the disease which tore his vitals; and, though this may be discredited, she permitted his death-bed to be neglected, and his funeral deserted, to increase the welcome to her more favored son, Henry. The Duke of Guise was massacred by Henry; Henry a short time after by an avenger of the Duke of Guise. Catharine, after having successively deserted those for whom she had risked so much, died at last deserted by each in turn.

§ 829. The National Bank of Northampton, Massachusetts, had, in 1875, a capital of four hundred thousand dollars and a surplus three-fourths as large. Its stock was selling in the market at one hundred and sixty dollars a share. The bank edifice was constructed with peculiar care. "Inside of the massive bank building was a solid vault. To unlock the outer door of the vault several keys were required, and these keys were distributed among as many bank officers. Inside of the vault . . . were two inner doors, each with its combination of four sets of figures; there was a new and solid safe with double doors, each also with its combination of four figures; finally, a watchman stationed within the bank kept guard until four o'clock each morning." Large special deposits, in addition to the moneys of the bank, were placed in these vaults. It was discovered on the morning of the 26th of January, 1876, that the bank had been robbed, and securities worth almost a million and a quarter of dollars and all the cash of the bank had been taken away. The parties, as it ultimately appeared, by whom the robbery was planned, were Robert C. Scott, James Dunlap, and William Conners who, in 1872, had robbed the Falls City Bank in Louisville, Kentucky, of $200,000, and two years later had stolen from a bank vault at Quincy, Illinois, several hundred thousand dollars. Preparatory to attempting the Northampton bank, they obtained the aid of William D. Edson, a skilled workman of Herring and Company, the safemakers. Edson, being in Northampton in 1875, was sent for by the officers of the bank to make some repairs in the locks. "Entrusted with the keys used to open the outer door of the vault, he took wax impressions, from which, on his return to New York, duplicate keys were made. There still remained the four-fold combinations of the inner doors and the safe to be overcome. Edson was aware that a clerk of the bank knew some of these combinations, and he suggested to John Whittlesey, the cashier, that there was danger in thus trusting a subordinate. By his advice all the combinations were finally given to Cashier Whittlesey. With the keys of the outer vault held by the robbers the whole question of a successful robbery depended upon eliciting the combinations from the cashier—a matter of no small audacity and peril, for he lived two-thirds of a mile from the bank in a house where beside himself there dwelt six persons."—The aid of several confederates being obtained, the leaders of the attack, about one

o'clock on the morning of the 26th of January, 1876, "gathered, masked, in front of Cashier Whittlesey's house. The front door was opened by turning the key with nippers, and the masked men entered. All of the seven inmates, consisting of Cashier Whittlesey, his wife, another married pair, two ladies, and a servant, were awakened, bound, and placed under guard. Scott and Dunlap then took Whittlesey in charge. He was ordered at the point of the pistol to surrender the combinations of the vault and safe. He tried to temporize, and gave the robbers a false set of combinations. Here was an emergency that the cunning of Scott was equal to. It would have wasted precious time to have gone after four o'clock to the distant bank to test the figures, and to take Whittlesey there through the open streets would be to risk the success of the whole scheme. So Scott, who had taken down the numbers on paper, suddenly asked Whittlesey to repeat them. The cashier could not recall the fictitious figures, and his deceit was evident. The robbers then resorted to more heroic means. The cashier was pounded, kicked, and choked until at last in pain and terror he gave the real numbers." The whole family, Whittlesey included, were kept gagged and imprisoned until four o'clock, at which time the watchman was expected to leave the bank. "Then while one part of the gang remained on guard over Whittlesey and the other captives, another part went to the bank. The weak doors were quickly entered, the outer door of the massive vault swung open at the touch of Edson's duplicate keys, and one after another the four sets of combinations of the vault and safe yielded, and all the securities in the large safe were exposed to view. The bonds, stock, and money were tumbled hastily into bags, and taken to a hiding place to be described hereafter in a schoolhouse about a mile from the bank. All the doors were then closed and the dials wrenched off so as to delay the opening of the vaults and safe. The robbers stole altogether about $1,200,000, of which $888,000 was in coupon and registered bonds, $300,000 in stocks, and $12,000 in bank bills. Of the bonds some $35,000 were in government coupon bonds, and easily negotiable. There was a second safe in this vault containing with other securities about $100,000 in bonds belonging to Smith College for Women; but the combination of this safe the gang had forgotten to get from Whittlesey, and no attempt to open it was made. Having hidden their booty, part of

the burglars took a wagon in waiting, and rode to Springfield, twenty miles away, where they were joined by their associates, who had come down by rail on an early train. The whole party then escaped to New York by different routes." The only trace found of the burglars was in a small schoolhouse where, as it ultimately transpired, they had been accustomed to meet when concocting their plans. "With obvious lack of caution they had left in the upper part of the schoolhouse bits of food, a lantern, and other marks of their profession. These discoveries led to a most rigid search of the building. Partitions were knocked apart, and every part of the structure, save one, that could possibly be used as a hiding-place, was explored. In that single spot left unsearched the bonds were actually concealed. At one end of the lower rooms was a small platform on which the younger scholars used to stand to reach a blackboard. The robbers had taken up a board, placed the stolen booty inside, and fastened back the timber with screws. The heads of the screws, however, they covered with putty, which had been painted the exact color of the paint on the platform. The searchers examined the board, but the unbroken line of paint threw them off the scent, and they overlooked the plunder when actually standing within a few inches of it. After the first alarm and general search were over, one of the robbers returned to Northampton by night, entered the schoolhouse, secured the bonds, and took them to New York." The exposure of the crime is due, not to this negligence on the part of the confederates, which illustrates the incoherency of crime noticed in a prior section, but to the inherent animosity between confederates now immediately under discussion. "After the robbery Edson fell out with his confederates. They had refused him his share of the booty, accused him of treachery, and feeling sure that he would not disclose a crime in which he had been so important an actor, they despised his threats. . . Whatever the motive he was induced to disclose the secret. Scott and Dunlap were arrested on the cars at Philadelphia by Pinkerton's detectives, and Scott incautiously admitted the ownership of a hand-bag found under his seat, and containing burglars' tools. The two criminals were hurried secretly through New York and to Northampton without giving opportunity for legal delays at the metropolis. In due season their trial came on. They were indicted for entering the bank and also Whittle-

sey's house, and on both indictments were found guilty, and sentenced to twenty years in the Massachusetts State Prison." The testimony of Edson was sustained by strong corroborative proof.[1] "Marks of tools found in their possession were traced at Whittlesey's house and at the bank. Both robbers were also identified by Mrs. Whittlesey and others. The handwriting of Dunlap was traced in the addresses of letters proposing a compromise with the bank, although the body of the letters were in characters printed with a pen."

Another instance of the disintegrating power of crime is to be found in further proceedings in this remarkable case. Four years after the conviction of Scott and Dunlap, two professional burglars, Draper and Leary, were arrested as implicated in the same offence. The stolen securities had not been returned; and it was now made known that Scott and Dunlap, thinking that in this way they might obtain a pardon, had determined, unless the spoil was given up, to appear as witnesses against not only Draper and Leary, but the whole gang. The intimation took effect. All the stolen documents (excepting $150,000 which had been disposed of, but which had not got into the hands of the principals in the crime) were returned to the bank. The second prosecution, however, broke down, nor, in fact, after the recovery of the stolen bonds, was it pushed by the bank with the zeal which the public service required. The failure of the second trial, however, was technically due to the refusal of Edson to testify to the participation of the accused.[2]

IV. GENERAL CONCLUSIONS.

§ 830. Such are some of the ways in which psychology may be used in the detection of guilt. It shows how a crime betrays itself, before its commission, in preparations, in intimations, in over-acting; at the time of its commission,

Conscience part of divine economy.

[1] See Com. *v.* Scott, 123 Mass. 222, reported in Wh. on Cr. Ev. 8th ed. §§ 13, 312, 430, 433, 441, 803.

[2] The paragraphs in inverted commas in the above narrative are taken from a detailed account in the New York *Evening Post* of June 29, 1881. On the trial the cashier stated that he could identify Scott, one of the burglars, by the voice. To show that there was no peculiarity in his voice, Scott was asked to repeat something, which he did. But the court held, that, though identification could be by voice, experiments in court with the voice were inadmissible. Com. *v.* Scott, 123 Mass. 222.

in incoherence; after its commission, in convulsive confessions, in remorse, in involuntary recurrence to the guilty topic, and in disruption between confederates. The inquiry is an important one in legal psychology, for it not only aids in the enforcement of the law, but it leads us to those supreme sanctions on which all law rests. When we visit a city, and see a series of police officers engaged in ferreting out crime; when we see, in connection with this, courts in which the criminal is tried, and the penalties to which crime is subjected, we draw from these facts the inference of a government whose office it is to prevent wrong. In proportion to the perfection in which this police system is carried out, do our conceptions of the wisdom, the power, and the earnestness of the supreme authority increase. So it is with the agencies we have been examining. Wherever guilt goes, they go. They dog it in all its stages. Its most secret haunts are not closed to them. Its weakness as well as its wisdom—its slips as well as its successes—they notice and record. Nor is their function that of detection alone. They have a strange power of compelling guilt to disclose itself. They show us that whatever doubts there may be as to the *origin* of evil, there is no doubt as to its *close*. For they show it to be pursued by a subtle and powerful avenger, which leaves it not until in one sense or another it is judicially punished.

§ 831. There is one difference, however, between the police of the courts and that of the conscience. The former, in order to scent out the crime, often assumes the garb of the criminal. Vidocq goes into the thieves' den to discover the thieves' secrets. He recalls memories of past crime, so as to induce a similar communicativeness in his associates; he gloats enticingly over the pleasures of guilt; he incites to fresh adventures by which the criminal may be entrapped. But it is not so with the angels of the conscience. They warn, they appeal, they implore, and this in tones the tenderest and holiest. Their garb is that of light, telling from whence they come. While they announce beforehand who they are, and use the most touching entreaties to prevent wrong, they declare it will be theirs afterwards to avenge that wrong if done;—while they leave no secret as to their awful mission, they gently plead by all the powers that persuasion can give, that vengeance may not be theirs to inflict. The memories they recall are not of early guilt, but of early innocence—of periods when no mad or polluted com-

rade stood by, inciting to ruin, but some tender friend or relative, uttering counsels of love. They paint not the pleasures of guilt, but its misery, and they point to scenes of peace to which guilt cannot reach. It is not theirs to avenge until their final entreaties are exhausted; and, when at last they hurry away to give their last report, he whose guilt is disclosed cannot but say: "This, your office of exposure as well as of restraint, I knew beforehand. You told me this—you told me that my sin, if unchecked, would find me out."

§ 832. It is here that the presumptions from this agency rise a step higher than those from an earthly police. The latter tells of a government, comprehensive, sagacious, and just, so far as its general object of punishing crime is concerned, but of a government which at the same time deals in punishment alone, and that by instruments which are often as polluted as the evils they are to correct. The former tells of a government, austere it is true, yet very tender; moving to holiness through holiness; permeating not merely the outer life, but the secrets of the heart; everywhere warning and entreating, while everywhere judging; making punishment certain and terrible, and yet so working it up into the consequences of the criminal's voluntary act as to render it his own choice. So it is that while a police of mere detection and exposure argues an executive of mere power, a police of love argues an executive of mercy; a police that is omnipresent, an executive that is omnipresent; a police that for a time entreats, warns, and dissuades, an executive that recognizes a temporary probation; a police that ultimately and irrevocably avenges, an executive that after a free probation judges definitely and finally. It is here we have brought before us the elements of that Christian Providence which the courts invoke as the foundation of public justice. In crime itself, therefore, we find the proof of that Chief Magistrate who avenges crime.

So it is that while the court-house derives its sanctions from this Supreme Power, it contributes to the proof of the existence of this Power an independent share of evidence. No witness can be sworn until he declares his belief in a future state of rewards and punishments; no trial can take place without strengthening the evidence on which this state rests. Human justice falls back on divine for its support; divine justice appeals to human as its witness. The penal precepts of the common law professedly find their basis in the dic-

tates of an enlightened Christian conscience; the divine sanction of this conscience is nowhere so fully shown as in the course of a trial at common law. The present discussion will not be without its value if, by illustrating these truths, it shows how close is the connection between the divine law and the human; and how the science of jurisprudence, while it draws down its strength from heaven to earth, may still, if rightly studied, lead its votaries from earth to heaven.

Punishment is retributive.

§ 833. The conclusion which has just been reached is not without its value in determining the vexed question of the object of punishment. It is argued by an influential school of thinkers that the object of punishment is the prevention of crime; that whenever we can thereby prevent crime we are justified in inflicting punishment; and that we are not justified in inflicting punishment unless by so doing we can prevent crime. By another school of thinkers it is held that the object of punishment is the reformation of the offender; that we are justified in inflicting punishment whenever it may reform the party punished, though it follows from this that he is not to be punished when he cannot be reformed. The true view, as has been elsewhere urged, is that punishment is to be imposed as a matter of retributive justice; and that when so imposed crime is more likely to be prevented and reformation induced than would be the case were punishment inflicted for the mere purpose of prevention or reform irrespective of justice. And what has been said in the preceding sections tends to strengthen this view. The punishment which, as we have seen, is self-inflicted by crime is not primarily either preventive or reformatory. In a secondary sense it has undoubtedly both these effects; but this is not because the punishment is imposed, but because it is felt to be deserved. We are deterred from wrong, for instance, when we witness the remorse of great wrong-doers, not because we see them suffering this remorse, but because we know they are suffering in consequence of their wrong-doing. Our own remorse at wrong done by ourselves is reformatory just in proportion as we feel the remorse is the consequence of the wrong. The system, then, that governs the world is that sin is to be punished because it is sin: *punitur quia peccatum est.* And it is worthy of notice that by this view are best preserved the sanctions at once of liberty and of law. It is not strange that absolutist

economists should claim the right to inflict punishment whenever prevention or reformation would be worked, because, if either prevention or reformation be the primary object of punishment, then the right of the state to punish is unlimited. I am entitled, however, to know beforehand what acts are unlawful, and, as a member of a civilized state, I am entitled to demand that when an act is made punishable the punishment assigned should be in proportion to the heinousness of the act. Unless this be the case I have no liberty worth having. Turgenieff, in his Punin and Babwin, has depicted with great vividness the stagnation produced by a system of government under which a transportation to Siberia is decreed whenever it is thought by the chief of the police that the person transported would be improved by the transportation, or other persons prevented from wrong-doing by seeing him driven into exile. Far more vivid would be the contrasts could we suppose such a system introduced among ourselves. In Russia it works badly enough, but in Russia free institutions never existed, and justice was never impartially administered. Our traditions are different. The establishing of such a system would be a demolition as well as a revolution. Our country, great and active as it is, would, if we submitted to the introduction among us of such a system of penal discipline, be paralyzed. There would be no business enterprise in which we could engage which might not to-morrow be pronounced criminal; there is no one, no matter how meritorious, who might not look forward to a moment in which, from some transient unpopularity, it might be, or from some other equally irrelevant conspicuousness, he might not be seized upon and punished in order to prevent others from wrong. If prevention alone be the standard, it is immaterial who is punished, or how severe the punishment is, if the desired terror is produced. Equally despotic is the plea of reformation not based on retributive justice. If reformation is the sole standard, then, as has been incidentally noticed, the utterly incorrigible could not be punished at all, and the punishment of others would have to be proportioned to their capacity for receiving and retaining impressions, just as the efforts of the sculptor are proportioned to the capacity of the material on which he works to receive and retain the finishing strokes of the chisel. Prevention and reformation are undoubtedly secondary objects of punishment;

in other words, retributive justice should be so shaped as best to effect these important ends. But unless a punishment is just, it will neither prevent crime in others, nor reform the person unjustly punished. Unjust punishment if inflicted in order to prevent lawlessness would stimulate lawlessness; if inflicted in order to reform an alleged offender, it would drive him into implacable resistance to the government which perpetrates so atrocious a wrong. To the preservation of law as well as to the preservation of liberty it is essential that punishment should be inflicted only in just retribution of a convicted crime which the law has previously made punishable.[1]

[1] See Wh. Cr. L. 8th ed. §§ 1 *e seq.*, where the topic is discussed at large; and see *supra*, § 754, note 2.

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